

STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY
R. Keith Kelly, Circuit Court Judge

APR 18 2017

SC Court of Appeals

Appellate Case No. 2016-001651

THE STATE,RESPONDENT,

v.

DANNY VEGA,APPELLANT.

INITIAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial court properly denied Appellant's motion for directed verdict because evidence was presented from which a reasonable juror could find him guilty of custodial interference beyond a reasonable doubt.

STATEMENT OF THE CASE

During the January 2016 session, the Spartanburg County Grand Jury indicted Appellant for custodial interference in violation of Section 16-17-495 of the South Carolina Code (2015), 2016-GS-42-0169. He proceeded to a jury trial before the Honorable R. Keith Kelly on July 14, 2016. The jury convicted him as charged and Judge Kelly sentenced him to three years' imprisonment.

STATEMENT OF FACTS

Messiah L. was born in April 2015 to his mother, Alex Liddy, and his father, Danny Vega (Appellant). Based on a previous relationship, the South Carolina Department of Social Services (DSS) entered into a safety plan for Messiah L. with Liddy.¹ (Tr.70–71.) Part of the plan required DSS to be able to visit Liddy and Messiah L. (Tr.72.) However, almost a month elapsed during which Liddy failed to keep in communication with DSS or keep it apprised of her whereabouts. (Tr.72.) When DSS contacted Appellant by telephone to inquire about their whereabouts, Appellant informed DSS he had not seen either his child or Liddy since Messiah L.’s birth. (Tr.73.) DSS ultimately determined Liddy violated the safety plan because it was unable to locate her or Messiah L. (Tr.72.) Based on this violation, DSS obtained an ex parte order on May 4 for the removal of Messiah L., with custody granted to DSS. (Tr.77, 87.) Officials found the child three days later with Liddy and Appellant at Appellant’s hotel room. (Tr.87.)

Appellant was arrested and charged with custodial interference and his case proceeded to trial. Officer Tony Brown testified he was notified about the May 4 order vesting custody in DSS, and he began looking for Messiah L. (Tr.97.) He eventually made contact with Appellant. When Officer Brown asked him where he resided, Appellant gave an address the officer knew to be vacant. (Tr.99.) Officer Brown thus requested Appellant come meet with him, but Appellant refused. (Tr.99.) Officer Brown told Appellant that if Appellant found the child, he needed to contact the authorities. (Tr.99.) Ultimately, Liddy and Messiah L. were discovered the following day at the Main Street Motel in Spartanburg with Appellant. (Tr.101.) Officer Brown stated it looked as if the room had been inhabited for “a couple days at least.” (Tr.102.)

¹ It appears the safety plan was deemed necessary because Liddy and Appellant had another child who had been placed in foster care because it was born addicted to methamphetamines. (Tr.13–14.)

Investigator Fred Lux testified that he accompanied Officer Brown to the Main Street Motel when they found Appellant with Liddy and Messiah L. (Tr.117.) In accord with Officer Brown's testimony, he stated the room "was obviously occupied" and there were "baby items throughout." (Tr.117.) When Investigator Lux asked where Messiah L. had been sleeping, Liddy informed him she and the child were sleeping together in one of the beds. (Tr.121.)

At the close of the State's evidence, Appellant moved for a directed verdict, arguing no evidence had been presented he took or transported the child or caused the child to be taken or transported. (Tr.123.) He further contended there was no evidence he did anything to conceal the child. (Tr.123) The trial court denied the motion, finding there was circumstantial evidence to support the inference he violated the statute. (Tr.125.)

Appellant testified in his own defense. He stated that he was at the hospital the day Messiah L. was born and stayed long enough to sign the birth certificate. (Tr.130.) However, he claimed he did not see the child again until May 7, when he was arrested at the motel. (Tr.131.) He testified Liddy arrived at his motel room with Messiah L. that same day. (Tr.131.) Appellant claimed he had not been in contact with Liddy at all since Messiah L.'s birth but had spoken with Liddy's mother—who ostensibly informed Liddy about Appellant's whereabouts. (Tr.131–32.). He said he answered a knock at the door and found Liddy with Messiah L., a Pack'n Play, diapers, milk and formula, and bags of clothes. (Tr.131.) Appellant clarified Liddy had been dropped off because she did not drive or have a car, but he did not know who brought her. (Tr.131–32.) She just appeared at his door with Messiah L. and all the baby's necessities. (Tr.131–132.) He said within minutes after her arrival, the officers showed up and arrested him. (Tr.35.)

Appellant rested and renewed his motion for directed verdict, which was again denied. (Tr.148–49.) After closing arguments, the trial court charged the jury on the State's burden of

proving Appellant guilty beyond a reasonable doubt and the elements of the crime. (Tr.166–174.). The jury began deliberation, and Appellant renewed his directed verdict motion, which was denied. (Tr.177–178.) The jury ultimately found Appellant guilty as charged and Judge Kelly sentenced him to three years' imprisonment. (Tr.180–85.)

ARGUMENT

The trial court properly denied Appellant's motion for directed verdict because evidence was presented from which a reasonable juror could find him guilty of custodial interference beyond a reasonable doubt.

Appellant contends the State adduced no evidence that Appellant took or transported the infant and therefore his conviction violated his constitutional right to due process of law. Appellant misapprehends the legal question involved and the circumstantial evidence within the record.

At the outset, the State wholeheartedly agrees with Appellant's studied assertion that the standard of proof required in criminal convictions is proof beyond a reasonable doubt. Appellant lodged no objection below indicating his belief the trial court misguided the jury on this foundational legal precept; instead, the trial court articulated in its charge to the jury that: "to the extent the State relies on circumstantial evidence, all the circumstances must be consistent with each other and when taken together point conclusively to the guilt of the accused beyond a reasonable doubt." (Tr.170-71.)

Based on this undisputed standard, our Supreme Court of South Carolina has clarified that when "ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." *State v. Bennett*, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016). In considering the motion, "the trial court views the evidence in the light most favorable to the State and must 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 be fairly and logically deduced." *Id.* at 236-37, 781 S.E.2d at 354 (internal quotation omitted). However, where the evidence adduced raises a mere suspicion that the accused is guilty, a

directed verdict must be granted. *State v. Hepburn*, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013). In reviewing an appeal from a directed verdict, the appellate court looks to the existence or non-existence of evidence, not its weight. *State v. Cherry*, 361 S.C. 588, 593, 606 S.E.2d 475, 477-78 (2004). Where a defendant chooses to testify in his own defense, the appellate court must consider that testimony in addition to the evidence proffered by the State in reviewing the denial of a directed verdict. *Hepburn*, 406 S.C. at 431, 753 S.E.2d at 410. Section 16-17-495 makes it “unlawful for a person with the intent to violate [a court order awarding the custody of a child] to take or transport, or cause to be taken or transported, the child from the legal custodian for the purpose of concealing the child, or circumventing or avoiding the custody order” See S.C. Code Ann. § 16-17-495.

Appellant specifically argues the State failed to present evidence that he took or transported the child, citing to the failure of the State to present testimony attesting to how the child came to its current location. However, this contention fails to appreciate the nuance of a case based on circumstantial evidence, which allows the jury to make inferences based on the evidence presented. In evaluating circumstantial evidence, jurors determine whether the State has connected collateral facts to prove the proposition propounded; it is therefore a process more intellectual in nature than the evaluation of direct evidence. *State v. Logan*, 405 S.C. 83, 97-98, 747 S.E.2d 444, 451 (2013). Although Appellant repeatedly makes the odd assertion that the State failed to allege he took or transported the child, he misapprehends the testimony elicited. There is evidence Messiah L. was discovered in the company of Appellant and Liddy. Appellant testified Liddy had no independent means of transportation and acknowledges she did not arrive at his door unassisted. Somehow, Liddy appeared at the door with his child, a Pack’n Play, diapers, formula, bottles, and extra clothing. Appellant was evasive and untruthful with the authorities when they contacted him to inquire about his whereabouts and the whereabouts of his

child. Specifically, he lied about where he was living and refused to meet with police to help them find Messiah L. Additionally, although he was apparently in contact with Liddy's mother—who he claims informed Liddy of his actual whereabouts—he did not recommend officers or DSS contact her. Further, he never notified them as to the appearance of Liddy and Messiah L. even if events occurred as he stated. A logical inference from the evidence adduced is that Appellant transported them to the motel room, or at least facilitated that arrival and acted to conceal their whereabouts. This may not be the exclusive inference, but the trial court properly examined this issue in the light most favorable to the State and determined evidence adduced formed a reasonable basis from which a jury could find Appellant guilty. Accordingly, there was no error and the conviction should be affirmed.

CONCLUSION

Based on the foregoing, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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April 18, 2017

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PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

David R. Schumpert III, Esquire
Post Office Box 16466
Seneca, South Carolina 29679

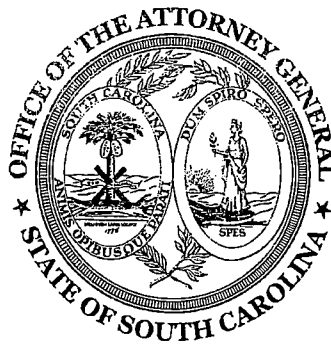
I further certify that all parties required by Rule to be served have been served.

This 18th day of April, 2017.



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April 18, 2017

David R. Schumpert III, Esquire
Post Office Box 16466
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RE: State v. Danny Vega
Appellate Case No. 2016-001651

Dear Mr. Schumpert:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Rance Saunders
Assistant Attorney General
S.C. Bar # 100073

RS/ab
Enclosures

cc: Honorable Jenny A. Kitchings (original enclosed)
Victim Services