THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of General Sessions

Honorable Deadra Jefferson, Ninth Circuit Court Judge

Appellate Case No. 2016-0001793

The State, Respondent

v.

Telly Darnell McClam, Appellant

APPELLANT'S INITIAL BRIEF

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STATEMENT OF THE CASE

Appellant Telly McClam appeals a judgment of conviction, entered by the Ninth Judicial Circuit Court of South Carolina following a conviction at a jury trial which occurred on February 29 – March 3, 2016. (Tr. Trans. pp. 1, 693-94). McClam was found guilty on all charges, including; two counts of criminal sexual conduct in the first degree; kidnapping; burglary in the first degree; possession of a firearm during the commission of a violent crime, and; unlawful possession of a firearm by a felon. At sentencing, McClam was sentenced to five years for each of the firearm convictions, 30 years for kidnapping, and three life sentences, one for each criminal sexual conduct first degree, and one for the burglary in the first degree. (Tr. Trans. p. 715, l. 24 – p. 716, l. 14).

STANDARD OF REVIEW

"On appeal, the trial court's ruling will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law." *State v. Sheldon*, 344 S.C. 340, 342, 543 S.E.2d 585, 585-86 (Ct. App. 2001). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000).

When the State fails to produce substantial circumstantial evidence that a defendant committed a particular crime, the defendant is entitled to a directed verdict. *State v. Rothschild*, 351 S.C. 238, 243, 569 S.E.2d 346, 348 (2002). A circuit judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty. *State v. Schrock*, 283 S.C. 129, 132, 322 S.E.2d 450, 451-52 (1984). The court shall direct a verdict in Appellant's favor if there is a failure of competent evidence tending to prove the charge in the indictment. Rule 19(a), SCRCrimP. "A defendant is entitled to a directed verdict when the State fails to present evidence on a material element of the offense charged." *State v. Brown,* 360 S.C. 581, 586, 602 S.E.2d 392, 295 (2004).

ARGUMENT

I. THE TRIAL COURT ERRED IN ITS DISCRETION WHEN IT DENIED APPELLANT'S MOTION FOR A DIRECTED VERDICT WHEN THE STATE FAILED TO PROVIDE ADEQUATE DIRECT EVIDENCE OR SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE WHICH TENDED TO PROVE THE GUILT OF APPELLANT.

According to *State v. Rothschild*, a defendant is entitled to a directed verdict when the State fails to produce substantial circumstantial evidence that the defendant committed a particular crime. 351 S.C. 238, 243, 569 S.E.2d 346, 348. Additionally, a defendant is entitled to a directed verdict when the evidence merely raises a suspicion that the defendant is guilty. *State v. Schrock,* 283 S.C. 129, 132, 322 S.E.2d 450, 451-52 (1984). In this case, the State failed to produce direct or substantial circumstantial evidence which indicated the guilt of Appellant. According to *State v. Logan,* a proof involving circumstantial evidence has failed if it merely portrays Appellant's behavior as suspicious. 405 S.C. 83, 99, 747 S.E.2d 444, 452 (2013). Therefore, the evidence against Appellant did not tend to prove his guilt, and the Court should have directed a verdict in favor of Appellant.

1. **The State failed to show direct or substantial circumstantial evidence which reasonably proved the guilt of Appellant.**

According to *State v. Pinckney*, the State must produce direct or *substantial* circumstantial evidence showing the guilt of the accused in order to submit the case to a jury. 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000). Otherwise Appellant is entitled to a directed verdict in his favor from the court.

In this case, the State failed to show direct or substantial circumstantial evidence which reasonably proved the guilt of Appellant. The State's evidence failed to show that

Appellant was guilty of each material element of the crimes he was charged with. The State did not show evidence to establish that Appellant entered a dwelling with an intent to commit a crime therein. The State further failed to adequately establish that any of the aggravating factors required for first degree burglary were present at the time Appellant allegedly entered a dwelling. Furthermore, the State failed to adequately establish that Appellant was guilty of kidnapping when there were several opportunities for the alleged victims to leave had they had the desire to do so. Additionally, the State failed to establish that Appellant was in possession of a firearm, since he had no gun on his person when the police arrested him. Finally, the State failed to show adequate evidence of each material element of the crimes with which Appellant was charged.

2. The Court should have directed a verdict in favor of Appellant.

The State failed to produce any evidence which pointed conclusively to the guilt of Appellant. At best, the State's evidence portrayed Appellant's behavior as suspicious. Therefore, the Court should have found that Appellant's argument that a verdict should be directed in his favor was meritorious, and the Court should have directed a verdict in favor of Appellant. As a result, Appellant respectfully requests that this court reverse the ruling of the trial court.

II. THE TRIAL COURT ERRED IN ITS DISCRETION WHEN IT FOUND THAT APPELLANT'S MANDATORY SENTENCING UNDER S.C. CODE SECTION 17-25-45 DOES NOT CONSTITUTE CRUEL AND UNUSUAL PUNISHMENT.

A. Legal Authority

The Eighth Amendment to the United States Constitution protects Americans from the imposition of cruel and unusual punishment by the government. Expressly, the Eighth Amendment reads "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." In *State v. Kiser*, the South Carolina Supreme Court wrote, "The cruel and unusual punishment clause requires that the duration of a sentence not be grossly out of proportion with the severity of the crime." 288 S.C. 441, 443, 343 S.E.2d 292, 293 (1986).

The trial court's sentence was based upon S.C. Code Ann. § 17-25-45. Under this law, upon conviction of a most serious offense, a person must be sentenced to a term of imprisonment for life without the possibility of parole if that person has one or more prior convictions for a most serious offense, or two or more prior convictions for a serious offense. Generally, a sentence that falls within the limits fixed by statute is not "cruel and unusual." *State v. Kimbrough,* 212 S.C. 348, 46 S.E.2d 273 (1948). However, even if it is not cruel and unusual "in kind," a particular sentence may be so severe in duration that it violates the constitutional prohibitions against cruel and unusual punishment. *Id.*

B. Discussion

Following his guilty convictions and prior to sentencing, Appellant argued that S.C. Code Annotated Section 17-25-45, as applied to this case, is unconstitutional because it violates the 8th Amendment's ban on cruel and unusual punishment. Appellant argued, "we would like to state to the Court that it is our position that 17-25-45 results in

cruel and unusual punishment." (Tr. Trans. p. 707, ll. 7-9). In dismissing this argument, the Court ruled that it was without merit. The Court further ruled that life without parole ("LWOP") was appropriate in this case "in light of his having been given a much more favorable offer and having turned that down where he could have far [sic] gone a life without parole exposure. Not that he's being penalized for a trial because I'm a great believer in the trial system." (Tr. Trans. p. 715, ll. 9-14).

However Appellant contends that such a sentence is cruel and unusual punishment, in violation of the Eighth Amendment. Whether or not a punishment is cruel and unusual is based on a consideration of two equally important principles: 1) the evolving standards of decency that mark the progress of a maturing society; and 2) the proportionality between the punishment and the offense. *State v. Pittman*, 373 S.C. 527 562, 564-65, 647 S.E.2d 144, 162-63 (2007). Under these principles, Appellant asserts that his sentencing for three life sentences without possibility of parole under S.C. Code Annotated Section 17-25-45 is cruel and unusual.

Prior to his trial, Appellant was offered a plea deal with a range of 15 to 25 years. (Tr. Trans. p. 700, ll. 20-25). This range represents the sentence that the prosecution felt was reasonable for Appellant in light of the crimes he was charged with and the evidence available in support of such crimes. Although Appellant denied this offer, his denial does not change the reasonableness of the sentence. Appellant's denial does not change the nature of the crimes with which he was charged. Therefore, the reasonable sentencing range should not be affected by his choice to exercise his constitutional right to a jury trial.

A sentence of life imprisonment without the possibility of parole is the second most severe sentence available under American law. In light of its severity, such a sentence should be reserved only for the most serious of crimes that do not fall under the death penalty. In the instant case, Appellant was sentenced to three such terms of life without the possibility of parole. Such a severe sentence, especially tripled as it is in this case, constitutes cruel and unusual punishment.

Appellant's sentencing recommendation at trial should have more closely resembled the more reasonable sentencing recommendation he was offered prior to trial. Instead, Appellant's sentence was exponentially longer, ensuring that he will never again be free in this life. Appellant's sentence, especially in light of the sentence he was initially offered, amounts to cruel and unusual punishment. Therefore, Appellant's sentence is a violation of the Eighth Amendment, and Appellant should be entitled to relief.

III. THE TRIAL COURT ERRED IN ITS DISCRETION WHEN IT FOUND THAT APPELLANT'S MANDATORY SENTENCING UNDER S.C. CODE SECTION 17-25-45 DOES NOT VIOLATE THE SEPARATION OF POWERS DOCTRINE OF THE UNITED STATES CONSTITUTION.

Following his guilty convictions and prior to sentencing, Appellant also argued that S.C. Code Annotated Section 17-25-45, as applied to his case, is unconstitutional because it results in an violation of the separation of powers doctrine. Appellant argued, "this statute is a creation of the legislative branch which enables the executive branch, in this case the Solicitor, to exercise control over the judicial branch and infringe upon their sentencing discretion and authority." (Tr. Trans. p. 707, l. 22-p. 708, l. 3). This mandatory LWOP law as applied to Appellant violates the separation of powers doctrine by depriving the judicial branch of discretion to consider mitigating circumstances surrounding the instant offenses, as well as past convictions.

It is within the discretion of the prosecution to choose whether or not to pursue the mandatory LWOP sentence under Section 17-25-45. However, where the prosecution does pursue this mandatory sentence, it deprives the judicial branch of its power to impose a certain sentence. This oversteps the bounds of the legislature's power by allowing the executive branch to effectively tie the hands of the judicial branch, violating the separation of powers.

Appellant rightly argued that mandatory sentencing under S.C. Code Annotated Section 17-25-45, as applied in the present case, is unconstitutional. This statute effectively allows the executive branch to tie the hands of the judicial branch at sentencing, violating the separation of powers requirement of the Constitution. As a result, the court's ruling was in error. Therefore, Appellant respectfully requests that the ruling of the trial court be reversed.

CONCLUSION

The trial court erred in its discretion when it denied Appellant's motion for a directed verdict when the State failed to meet its burden of proof. Furthermore, the trial court erred in its discretion when it dismissed Appellant's argument that mandatory sentencing under S.C. Code Section 17-25-45 in this case constitutes cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution. Finally, the trial court erred in its discretion when it dismissed Appellant's argument that mandatory sentencing under Section 17-25-45 violates the separation of powers doctrine of the United States Constitution.

For those reasons listed above, Appellant respectfully requests that the rulings of the trial court be reversed, and remanded for further proceedings.

RESPECTFULLY SUBMITTED THIS 20 of July 2017.

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AFFIDAVIT OF SERVICE

I, Ashton R. Gottschall, certify on this date, July 20, 2017, I served the Initial Brief and Designation of Matter in this action, dated July 20, 2017 on the Honorable Alan Wilson, Anne M. Williams, Daniel Poulos, and Clerk of Court Mary P. Brown by mailing it to him/her at his/her work address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

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Respectfully submitted,

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