

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Pickens County

Honorable John C. Hayes, Circuit Court Judge

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KARL RYAN LANE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000258

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JOHNSON PETITION FOR WRIT OF CERTIORARI
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Wanda H. Carter
Deputy Chief Appellate Defender

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ATTORNEY FOR PETITIONER

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Trial counsel erred in failing to include the argument that “mere presence” at a scene is not sufficient proof to convict one of a crime as an additional ground in support of the directed verdict motion made at trial because accomplice liability was an issue in the case as one eyewitness declared she saw two people present at the crime scene, and because sufficiency of the evidence was the chief issue in the case.....4

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ISSUE PRESENTED

Trial counsel erred in failing to include the argument that “mere presence” at a scene is not sufficient proof to convict one of a crime as an additional ground in support of the directed verdict motion made at trial because accomplice liability was an issue in the case as one eyewitness declared she saw two people present at the crime scene, and because sufficiency of the evidence was the chief issue in the case.

STATEMENT

Petitioner Karl Ryan Lane was convicted of first degree burglary per jury trial held during the January 2012 term of the Pickens County General Sessions Court before Judge G. Edward Welmaker and sentenced to imprisonment for a period of 215 months. App.1-342. John Dejong represented petitioner at trial, and Assistant Solicitor Jennie Barwick appeared on behalf of the state.

After appellate briefs were filed with the South Carolina Court of Appeals, petitioner's case was reversed due to insufficient evidence. App. 343-406. See State v. Lane, Op. No. 5175 (S.C. Ct. App. filed October 9, 2013). App. 407-411. Dayne Phillips, Esquire, represented petitioner on appeal before the South Carolina Court of Appeals. Then, after the state appealed the Court of Appeals' decision, petitioner's conviction and sentence were reinstated per a reversal issued by the South Carolina Supreme Court. App. 412-462. See State v. Lane, Opinion No. 27464 (S.C. filed November 12, 2014). App. 463-465. Carmen Ganjehsani represented petitioner on appeal before the South Carolina Supreme Court.

On December 5, 2016, petitioner filed a PCR application with the Pickens County Office of the Clerk of Court. App. 455-483. The respondent filed a return dated January 12, 2016, requesting that a hearing be held in response to petitioner's PCR action. App. 484-488.

A PCR hearing was convened in the case on December 5, 2016, at the Pickens County Courthouse before Judge John C. Hayes, III. App. 489-509.

On December 7, 2016, Judge Hayes, III, issued an Order of Dismissal in the case. App. App. 511-516. Petitioner appealed Judge Hayes' Order. This brief follows.

ARGUMENT

Trial counsel erred in failing to include the argument that “mere presence” at a scene is not sufficient proof to convict one of a crime as an additional ground in support of the directed verdict motion made at trial because accomplice liability was an issue in the case as one eyewitness declared she saw two people present at the crime scene, and because sufficiency of the evidence was the chief issue in the case.

At trial, Mark McSwain testified that when he returned home from work on the afternoon of April 21, 2011, he realized that his firearms were missing from inside his safe at his home and that the back door of his home was open also. App. 51, l.1 – p. 66, l. 13.

McSwain’s neighbor, Pamela Holladay, testified that she saw a vehicle that looked like a red/burgundy Mitsubishi Gallant-type vehicle with a gray primer panel and a paper tag parked in McSwain’s driveway on the afternoon of April 21, 2011, and then she saw a person emerge from the vehicle and go to the front door (and maybe the backdoor) and that she believed she saw a second person in the vehicle also. App. 111, l. 3 – p. 117, l. 6.

Deputy Michael Torres arrived at McSwain’s house in response to the burglary call on that afternoon and when he returned to the scene later on that afternoon, he found possession of and recovered a piece of paper lying in his driveway. Ultimately, the piece of paper was identified as a slip of paper that was issued to petitioner as a receipt from an employment office indicating that he petitioner had applied for jobs on the same date the burglary occurred. App. 122, l. 15 p. 128, l. 22.

Detective Benjamin Dow located a burgundy Mitsubishi Gallant with a primer gray fender at the residence where it was believed that petitioner resided, and subsequently learned

from petitioner that he and his girlfriend drove that car on April 21, 2011, and that he did visit the unemployment office on April 21, 2011, as well. App. 184, l. 12 – p. 201, l. 24.

Note that the testimony of petitioner’s girlfriend’s father (Kenneth Cole) was that his daughter drove a red car with a paper tag and that petitioner did drive the car also. App. 138, l. 15 – p. 144, l. 21.

The South Carolina Court of Appeals held that this circumstantial evidence presented by the state did not constitute substantial evidence establishing guilt on petitioner’s behalf, but the South Carolina Supreme Court held that there was substantial circumstantial evidence in existence in the case that reasonably tended to prove petitioner’s guilt on the burglary charge. App. 407 – 411; App. 463 – 465.

At the close of the state’s case, defense counsel moved for a directed verdict arguing the sufficiency of the evidence on the ground that the state’s case lacked substantial circumstantial evidence that could reasonably tend to prove guilt. App. 223, l. 16 – p. 229. Counsel’s argued that the state’s case presented suspicion only that a crime was committed. Tr. 229, l. 1-3. The Court denied the motion. Tr. 230, l. 8 – p. 231, l. 8.

However, counsel failed to supplement the “suspicion only” and “lack of substantive circumstantial evidence” arguments, with the additional argument that “mere presence” at the crime scene did not establish guilt either in the case. Counsel did argue that petitioner was in the vicinity only. App. 228, l. 18-23. Therefore, the next logical argument should have been a segue to the legal “mere presence” legal argument, particularly since the eyewitness in the case believed that she saw two people in the vehicle parked in the driveway of the burglarized house.

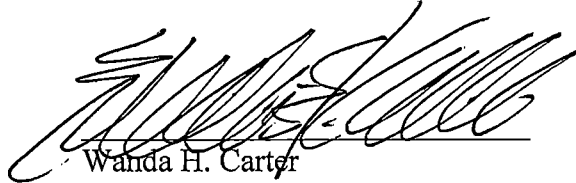
Mere presence at a crime scene, is not sufficient to establish convict of guilt as an aider or abettor. State v. Mattison, 388 S.C. 469, 697 S.E.2d 578 (2010). Moreover, mere presence and

prior knowledge that a crime would be committed, without more, is insufficient evidence to constitute guilt. State v. Thompson, 374 S.C. 257, 647 S.E.2d 702 (2007). Inasmuch as accomplice liability came into play in this case as the eyewitness stated that there was a possibility that two people were in the car parked at McSwain's residence when the alleged burglary occurred, then a mere presence legal argument in support of the motion for a directed verdict based on the sufficiency of the evidence should have been included in conjunction with the arguments contending that this was a case of mere suspicion and that there was a lack of substantial circumstantial evidence of guilt on appellant's behalf presented at trial.

Counsel's failure to argue all three legal theories on petitioner's behalf while making the directed verdict motion at trial constituted deficient legal representation in the case, which violated the Sixth Amendment's guarantee of competent counsel in a criminal proceeding; and but for counsel's error in this regard, a reasonable probability exists that the outcome of petitioner's trial would have been different. See Strickland v. Washington, 466, U.S. 668, 104 S.Ct. 2052 (1984).

CONCLUSION

Based on the foregoing argument, petitioner's counsel requests that the petition be granted and full briefing allowed on the above-raised issue.

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 1st day of September 2017.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Pickens County

Honorable John C. Hayes, Circuit Court Judge

KARL RYAN LANE,

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V.

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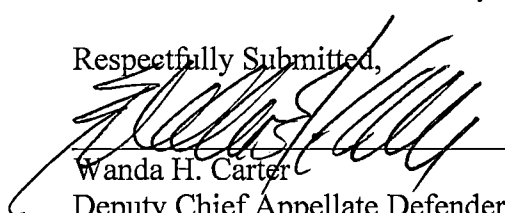
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Karl Ryan Lane states that:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's trial before Judge John C. Hayes, which was held on December 5, 2016, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Karl Ryan Lane.

Respectfully Submitted,



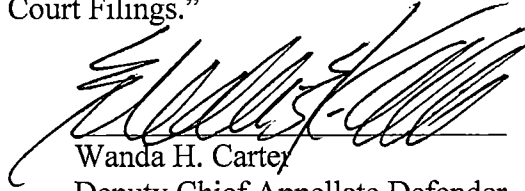
Wanda H. Carter

Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 1st day of September, 2017.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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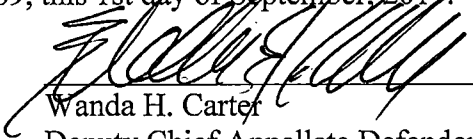
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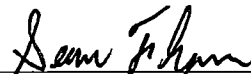
RESPONDENT

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CERTIFICATE OF SERVICE
—————

The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon DeShawn H. Mitchell, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Karl Ryan Lane, #349514, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 1st day of September, 2017.


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 1st day of September, 2017.



Notary Public for South Carolina
My Commission Expires: 10/30/2022. (L.S)