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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Orangeburg County

Honorable Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DANIEL CALEB BRAXTON,

APPELLANT

APPELLATE CASE NO 2016-002341

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial court erred by refusing to grant a directed verdict because the State failed to present any direct or substantial circumstantial evidence tending to prove that there were no mitigating circumstances justifying Appellant's refusal to comply with Deputy Quinlin's signal to stop his vehicle.

STATEMENT OF THE CASE

On October 12, 2016, the Orangeburg County Grand Jury indicted Appellant Daniel Braxton for resisting arrest and failure to stop for a blue light. R. 173 – 174.

On November, 15, 2016, Appellant proceeded to trial before the Honorable Maite Murphy and a jury. R. 1. Minh Wyman represented Appellant, and Assistant Solicitors Tommy Scott and Phil Guise represented the State.

The jury found Appellant guilty of failure to stop for a blue light and not guilty of resisting arrest. R. 164, ll. 11-18. The trial court sentenced Appellant to five years imprisonment. R. 171, ll. 4-11.

ARGUMENT

The trial court erred by refusing to grant a directed verdict because the State failed to present any direct or substantial circumstantial evidence tending to prove that there were no mitigating circumstances justifying Appellant's refusal to comply with Deputy Quinlin's signal to stop his vehicle.

Relevant Facts

Orangeburg County Deputy Carl Quinlin had just started his shift around 6:00 p.m. on May 3, 2016 when he passed a small black pick-up truck heading in the opposite direction on Hickory Hill Road. R. 65, l. 11 – 70, l. 6. Based on his observations and training, Deputy Quinlin determined that the pick-up was speeding. *Id.*

Quinlin, who had a police K-9 in his backseat, turned his vehicle around and activated his "blue lights." *Id.* Quinlin quickly caught up to the pick-up truck. The truck pulled over to the side of the road and came to a stop with Quinlin's patrol car stopping behind him. *Id.*

At trial, Quinlin admitted that he employed extremely aggressive tactics during the traffic stop, despite the pick-up having pulled over without unusual delay:

> **I rapidly exited my patrol vehicle just due to the circumstances. We had already traveled almost a mile which is not usual. Especially at that kind of a speed** plus with the acceleration there's a threat point there we are trained to identify. Not knowing the driver's intent, the windows on the vehicle were very dark. It was tinted windows. I could make out slight movements in the vehicle but not enough to be able to describe to you what details like what color shirt, was it a black male or white male or black female or a white female or if he had a gun, a cell phone, a soda pop in his hand. I couldn't make out those kind of details. **So for my safety I went and drew my service weapon and commanded the driver to show his hands out the window. I started to slowly approach the vehicle.**

R. 68, l. 18 – 69, l. 9 (*emphasis added*). As Quinlin approached the vehicle with his gun drawn, the driver put the pick-up in gear and drove away. *Id.*

Quinlin and other deputies gave chase. The pick-up eventually came to a stop in a field about ten miles from where Quinlin initiated the traffic stop. R. 83, l. 5 - 88, l. 9. When Appellant got out of the vehicle, Quinlin, with the support of his police dog, arrested Appellant. R. 125, ll. 3-20. Curiously, Deputy Quinlin omitted any mention of the first traffic stop in his first report on the arrest. R. 99, l. 5 – 102, l. 15.

Appellant testified in his own defense. He explained that he had just left a friend's house after getting off of work. R. 121, l. 16 – 125, l. 8. A short time after turning on to Hickory Hill Road, Quinlin's patrol car passed Appellant in the opposite lane. Appellant was unsure how fast he was going. *Id.*

Appellant pulled over once Quinlin caught up to his car. *Id.* Quinlin's aggressive tactics at the traffic stop caused Appellant to panic and fear for his life:

> As soon as I pulled over he got out of his car. The first thing I noticed is he grabbed his gun off his side. He immediately grabbed his gun off his side. That's when he held it up, pointed it toward me and started running toward my vehicle. And that's when I thought, I said okay, something here is not right and that's when I pulled off. . . .
>
> I don't really know how I was feeling. I was just thinking something here is not right. I didn't want to get shot.

R. 123, l. 10 – 124, l. 1.

Appellant testified that he drove away from the traffic stop because he wanted to reach a safer place where his interaction with the inexplicably aggressive Deputy Quinlin would be witnessed by other people. R. 126, l. 1 – 130, l. 21. The traffic stop occurred on an isolated stretch of rural road. There were no other witnesses and Quinlin's patrol car was either not equipped with a camera or the camera was malfunctioning.

Discussion

The South Carolina Supreme Court "has repeatedly affirmed the principle that when the State fails to produce *substantial circumstantial evidence* that the defendant committed a particular crime, the defendant is entitled to a directed verdict." *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2011) (emphasis added). To survive a directed verdict, the State is required to prove every element of a charged offense. *State v. Attardo,* 263 S.C. 546, 211 S.E.2d 868 (1975); *State v. Barksdale,* 311 S.C. 210, 428 S.E.2d 498 (Ct.App.1993). When considering a motion for directed verdict of acquittal, "the trial court is concerned with the existence or non-existence of evidence, not its weight." *Brown*, 360 S.C. at 586, 602 S.E.2d at 395.

A defendant is entitled to a directed verdict when the State has failed to produce any direct or substantial circumstantial evidence that the defendant committed a particular crime. *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2011) (*emphasis added*). A defendant is also entitled to a directed verdict when the State fails to present evidence to support every element of the charged offense. *See State v. Brown*, 360 S.C. 581, 586, 602 S.E.2d 392, 395 (2004).

In reviewing the denial of a motion for directed verdict, the appellate court must view the evidence in the light most favorable to the State. *State v. Kelsey,* 331 S.C. 50, 502 S.E.2d 63 (1998). **However, where the facts of the case, even if proved, do not constitute the alleged criminal conduct, a directed verdict must be granted.** *See State v. Lee,* 294 S.C. 461, 365 S.E.2d 734 (1988) (*emphasis added*); *see also State v. Cain*, 419 S.C. 24, 795 S.E.2d 846 (2017) (theoretical yield testimony forced jury to speculate as to whether Cain could have actually produced the requisite quantity of methamphetamine necessary to be guilty of trafficking).

This Court's opinion in *State v. Jackson*, aptly illustrates when the State's failure to present any evidence on an element of the charged offense mandates a directed verdict of

acquittal on appeal. 338 S.C. 565, 569, 527 S.E.2d 367, 369-370 (Ct. App. 2000). Jackson was convicted of breach of trust with fraudulent intent arising out of his purchase of a new car. Breach of trust with fraudulent intent is a common law crime defined as "larceny after trust." *State v. Owings,* 205 S.C. 314, 316, 31 S.E.2d 906, 907 (1944).

Jackson traded in his car to a dealership with the value of his car going towards the purchase of a new car. *Jackson*, 338 S.C. at 567-568, 527 S.E.2d at 368-369. His car had a $7,000 lien that the dealership agreed to pay off as part of the sales contract. *Id.* After the sale, the dealership mistakenly sent the check paying off the lien to Jackson instead of the lien holder. Jackson cashed the check, spent the money, refused to reimburse the dealership, and was arrested. *Id.*

In granting Jackson a directed verdict of acquittal on appeal, this Court held that the State did not prove the existence of a trust, defined as "an arrangement whereby property is transferred with intention that it be administered by trustee for another's benefit." *Id.* at 570, 527 S.E.2d at 370 *quoting* Black's Law Dictionary 1047 (6th ed.1991). The failure to prove this essential element of the crime charged was fatal to the prosecution and this Court remanded Jackson's case for the entry of a judgment of acquittal. *Id.* at 571-572, 527 S.E.2d at 371.

In this case, Appellant was convicted of failure to stop for a blue light in violation of S.C. Code Ann. § 56-5-750(A) (2016):

> **In the absence of mitigating circumstances**, it is unlawful for a motor vehicle driver, while driving on a road, street, or highway of the State, to fail to stop when signaled by a law enforcement vehicle by means of a siren or flashing light. An attempt to increase the speed of a vehicle or in other manner avoid the pursuing law enforcement vehicle when signaled by a siren or flashing light is *prima facie* evidence of a violation of this section. Failure to see the flashing light or hear the siren does not excuse a failure to stop when the distance between the vehicles and other

> road conditions are such that it would be reasonable for a driver to hear or see the signals from the law enforcement vehicle.

(*emphasis added*). It was undisputed that Appellant initially stopped when Deputy Quinlin activated his blue lights to pull Appellant over for speeding. R. 65, l. 11 - 70, l. 6. It was also undisputed that Deputy Quinlin approached Appellant's car with his gun drawn and pointed at Appellant. *Id.*; *see also* R. 122, l. 4 – 129, l. 2.

The predecessor statute to S.C. Code Ann. § 56-5-750, did not include the "absence of mitigating circumstances" element:

> It shall be unlawful for any motor vehicle driver, while driving on any road, street or highway of the State, to fail to stop when signaled by any law-enforcement vehicle by means of a siren or flashing light. Any attempt to increase the speed of a vehicle or in other manner avoid the pursuing law-enforcement vehicle when signaled by a siren or flashing light shall constitute prima facie evidence of a violation of this section. Failure to see the flashing light or hear the siren shall not excuse a failure to stop when the distance between the vehicles and other road conditions are such that it would be reasonable for a driver to hear or see the signals from the law-enforcement vehicle.

S.C. Code 1962 § 46-359. Accordingly, all the State had to prove under § 46-359 was: (1) that the defendant was driving a motor vehicle; (2) that he was driving it on a road, street or highway of this State; (3) that he was signaled to stop by a law-enforcement vehicle by means of a siren or flashing light; and (4) that he did not stop. *State v. Hoffman*, 257 S.C. 461, 186 S.E.2d 421 (1972).

What constitutes a "mitigating circumstance" in the context of a traffic stop is not defined in the Uniform Act Regulating Traffic on Highways. S.C. Code Ann. § 56-5-110 *et. seq.* However, Black's Law Dictionary defines "mitigating circumstances" as:

> A fact or situation that does not justify or excuse a wrongful act or offense, but that reduces the degree of culpability and thus may reduce the damages (in a civil case) or the punishment (in a

> criminal case). . . . An unusual or unpredictable event that prevents performance.

Black's Law Dictionary 102 (6th ed.1991). At Appellant's trial the court instructed jurors:

> In determining whether or not there was mitigating circumstances which would justify the Defendant's failure to stop for blue light, you may consider actual road conditions, actual roadside conditions, other conditions such as lighting and weather, officer, driver and/or passenger safety and any other circumstances you believe to reasonably mitigate the alleged violation.

R. 159, ll. 12-19.

Given its placement in S.C. Code Ann. § 56-5-750(A), the "absence of mitigating circumstances" is an element of the failure to stop for a blue light offense. To secure a conviction, the State must prove beyond a reasonable doubt that there were no mitigating circumstances justifying Appellant's (temporary) failure to stop.

Any other interpretation of the statute would impermissibly shift the burden of proof from the State to the defendant. *See Attardo*, 263 S.C. at 551-552, 211 S.E.2d at 870 (holding that prosecution for knowing or intentional possession of controlled substance, trial court's instruction that person in possession of contraband is factually presumed to know what it is and that burden is then on him to prove that he did not have actual knowledge was erroneous in shifting to defendant the burden of proof with respect to an element of the offense).

Moreover, penal statutes must be strictly construed against the State and in favor of the defendant. *Hair v. State*, 305 S.C. 77, 406 S.E.2d 332 (1991). Any doubt as to the proper construction should be resolved in favor of the citizen against the state. *State v. Cutler*, 374 S.C. 376, 264 S.E.2d 420 (1980); *see also Yates v. United States*, 135 S.Ct. 1074 (2015) (ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity).

Accordingly, to survive directed verdict in Appellant's case, the State had to present any direct or substantial circumstantial evidence tending to show that no mitigating circumstances existed when Appellant left the traffic stop. *See State v. Butler*, 407 S.C. 376, 382, 755 S.E.2d 457, 460 (2014) (affirming denial of directed verdict in murder prosecution where inconsistent accounts of how fatal stabbing occurred "created credibility issues and questions of fact to be resolved by the jury.").

The State manifestly failed to produce any direct or substantial circumstantial evidence tending show that Appellant's fear of a fatal encounter with Deputy Quinlin, as Quinlin ran towards Appellant's car screaming with his gun drawn on an isolated rural road at night, did not present a mitigating circumstance justifying Appellant's temporary failure to comply with Quinlin's signal to stop. *State v. Weston,* 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006) ("A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged."); *see also State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2011).

CONCLUSION

By reason of the foregoing arguments, Appellant Daniel Braxton respectfully requests that this Court reverse his conviction for obstruction of justice and remand his case to the Orangeburg County Court of General Sessions for the issuance of an Order of Acquittal.

John H. Strom
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of August, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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THE STATE,

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V.

DANIEL CALEB BRAXTON,

APPELLANT

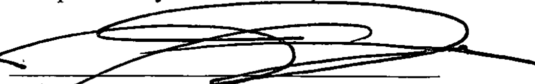
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Daniel Braxton 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 Maite Murphy, which was held on November 15, 2016, 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 Daniel Braxton.

Respectfully Submitted,



John H. Strom
Appellate Defender
ATTORNEY FOR APPELLANT

This 4th day of August, 2017.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant 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."

August 4, 2017.

John H. Strom
Appellate Defender

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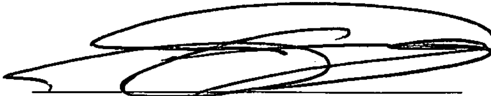
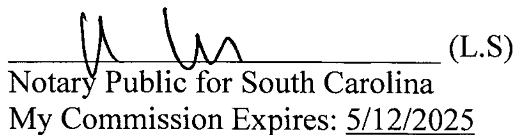
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders 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 Anders Brief of Appellant and Designation of Matter have been served on Daniel Braxton, #354591, at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512, this 4th day of August, 2017.



John H. Strom
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me this 4th day of August, 2017.



______________________ (L.S)
Notary Public for South Carolina
My Commission Expires: 5/12/2025