

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
J. Derham Cole, Circuit Court Judge

ORIGINAL
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MAR 29 2017
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MARK ALLEN BRADBERRY, SR.

APPELLANT

APPELLATE CASE NO 2016-001384

ANDERS BRIEF OF APPELLANT

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in failing to direct a verdict of acquittal on all charges where the state failed to present any direct or substantial circumstantial evidence that Appellant committed the charged offenses?

STATEMENT OF THE CASE

On January 28, 2015, a Spartanburg County grand jury indicted Appellant for murder (2015-GS-42-0445). R. 386-387. In a separate indictment (2015-GS-42-0446), the grand jury indicted Appellant for armed robbery and possession of a weapon during the commission of a violent crime. R. 389-390. The state, represented by Barry Joe Barnette, called the case to trial before the Honorable J. Derham Cole and a jury on June 20-22, 2016. R. 1. Robert B. Hall represented Appellant. R. 1. The jury found Appellant guilty as charged. R.378, ll. 8-18. Judge Cole sentenced Appellant to life imprisonment for murder, thirty years' imprisonment for armed robbery, and five years' imprisonment for the weapon. R. 382, l. 21 -- R. 383, l. 13; R. 388; 391-392. He ordered the five-year sentence to be served consecutively to the others, but ordered the other two sentences to be served concurrently. R. 383, ll. 12-13; R. 388; R. 391-391.

On June 28, 2016, Appellant filed and served his notice of appeal. This brief follows.

ARGUMENT

The trial judge erred in failing to direct a verdict of acquittal on all charges where the state failed to present any direct or substantial circumstantial evidence that Appellant committed the charged offenses.

Relevant facts

In October 2014, Appellant lived with his mother, Connie Bataille. R. 283, ll. 24-25. He found his mother dead on October 29, 2014. R. 128, ll. 19-23; R. 137, ll. 1-3; R. 148, ll. 1-25; R. 284, ll. 8-10. Still mourning the recent loss of his son and traumatized by the sight of his deceased's mother, Appellant fled the residence in his mother's car. R. 291, ll. 14-24; R. 292, ll. 6-9; R. 294, ll. 7-23. He ended up in Myrtle Beach, the last place where he spent time with his deceased son. R. 294, ll. 20-23.¹ Overcome with grief at the loss of his son and now his mother, Appellant decided to commit suicide. R. 294, l. 20; R. 295, l. 25 – R. 296, l. 8. Appellant planned to jump off the pier to drown, but he lacked the courage. R. 296, ll. 19-24. He also tried – multiple times – jumping off the hotel roof, but was unable to go through with it. R. 296, ll. 22-24; R. 297, ll. 2-12. Appellant even drafted a last will and testament and wrote letters to his family regarding his desire to die. R. 143, l. 19 – R. 145, l. 4; R. 145, l. 20 – R. 146, l. 2; R. 239, l. 17 – R. 241, l. 4; R. 257, l. 18 – R. 258, l. 13.

Unable to kill himself, Appellant returned to Spartanburg County several days later. R. 297, ll. 22-24. He went to the home of a friend, but the friend did not answer when he knocked on the door. R. 298, ll. 14-20. Appellant returned to his car and took approximately thirty

¹ On his way to Myrtle Beach, Appellant stopped at Bi-Lo in Spartanburg County, where he picked up prescription pain medicine. R. 154, l. 6 - R. 156, l. 9; R. 295, ll. 19-21. Appellant also sold some jewelry at a local pawn shop. R. 167, ll. 16-24; R. 168, ll. 6-21; R. 294, l. 24 – R. 295, l. 3; R. 295, l. 13-18. In Columbia, Appellant stopped at a gas station, where he used Bataille's debit card to withdraw \$400. R. 179, ll. 21-24; R. 245, l. 8 – R. 246, l. 2; R. 317, ll. 3-6.

Klonopins, again attempting to commit suicide. R. 298, l. 22 – R. 299, l. 10. The strong prescription medicine rendered him unconscious. R. 299, ll. 11-12. The next thing he remembered he was being in the county detention center. R. 299, ll. 13-23.

On November 2, 2014, Bataille's daughter-in-law and adult granddaughter went to Bataille's home to check on her because no one in the family had heard from her for several days. R. 104, ll. 20-21; R. 105, ll. 8-14; R. 106, ll. 2-11. Upon their arrival, the two women found Appellant's car in the driveway, but Bataille's car was gone. R. 106, ll. 16-25. Thereafter, the two entered the home. R. 108, ll. 7-11. Everything in the home appeared normal until the two opened Bataille's bedroom door. R. 108, l. 12; R. 109, ll. 6-9. Upon opening the door, the daughter-in-law was "completely mesmerized by the mess." R. 109, ll. 14-16. Generally, Bataille was "very clean and ... very tidy." R. 109, l. 17. While standing in the doorway, the women saw a foot, and promptly left the home. R. 109, l. 24 – R. 110, l. 3. The pair then called 911. R. 110, l. 15.

When the police arrived at the home, they found Bataille, who was dead, lying on her bed. R. 236, l. 23 – R. 237, l. 2. Upon learning that Appellant lived in the home and was not there, he became the police's prime suspect in Bataille's death. R. 237, l. 21 – R. 238, l. 9. The blood evidence collected from the home matched Bataille, except for one spot of blood found on Appellant's bedroom door, which was matched to Appellant's DNA. R. 211, l. 4 – R. 213, l. 18; R. 265, ll. 7-23.

The following day, the police learned Appellant was asleep in a car at a residential address. R. 239, ll. 1-5. The officers raced to the location and found Appellant inside the car. R. 239, ll. 6-9. The police got him out of the car, interrogated him at the scene, and transported

him to the sheriff's office, where he was interrogated again. R. 239, ll. 10-13. The police charged Appellant with the death of his mother.

The autopsy revealed Bataille died as a result of multiple stab wounds and incised wounds with blunt force trauma to the head with open skull fractures. R. 277, l. 20 – R. 278, l. 2. According to the pathologist, who performed the autopsy on November 3, 2014, the decomposition was consistent with Bataille dying three to six days prior to the autopsy. R. 269, l. 21 - R. 270, l. 14.

At the conclusion of the state's case-in-chief, Appellant moved for a directed verdict of acquittal on all charges, arguing the state's case was only circumstantial and the state had presented insufficient evidence to submit the case to the jury. R. 279, ll. 18-2. With little elaboration, the judge denied the motion, finding there was evidence to support each of the essential elements. R. 279, l. 22 – R. 280, l. 4. At the close of all evidence, Appellant renewed his motion for directed verdict based on the insufficiency of the evidence. R. 332, ll. 5-7. The judge denied the motion "for the same reasons as previously provided." R. 332, ll. 8-9. After the jury returned its verdict, Appellant moved for a new trial, pointing out the circumstantial nature of the state's evidence. R. 382, ll. 1-6. The judge summarily denied the motion. R. 382, l. 7.

Discussion

A defendant is entitled to a directed verdict when the prosecution fails to provide evidence of the offense charged. State v. Brown, 103S.C. 437, 88 S.E.2d 1 (1916); State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006); State v. McHoney, 344 S.C. 85, 97 S.E.2d 30, 36 (2001). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused," the trial judge may deny the motion for directed verdict. State v.

Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001); State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000); State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000). When the prosecution relies exclusively on circumstantial evidence, the trial judge must direct a verdict in the defendant's favor unless there is any substantial circumstantial evidence which reasonably tends to prove the guilt of the defendant or from which his guilt may be fairly and logically deduced. State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011); State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000). Likewise, a directed verdict is appropriate when the evidence produced "merely raises a suspicion the accused is guilty." Lollis, 343 S.C. at 584, 541 S.E.2d at 256; State v. Arnold, 361 S.C. 386, 389-390, 605 S.E.2d 529, 531 (2004); State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 451-452 (1984); State v. Muhammed, 338 S.C. 22, 524 S.E.2d 637 (Ct. App. 1999). Our courts define suspicion as "a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." Lollis, 343 S.C. at 584, 541 S.E.2d at 256; State v. Hyder, 242 S.C. 372, 131 S.E.2d 96 (1963).

In Mitchell, 341 S.C. at 409, 535 S.E.2d at 127, the South Carolina Supreme Court held the lower court erred in failing to direct a verdict where the only evidence presented against the defendant was his fingerprint at the scene of the burglary. Likewise, the Lollis Court directed a verdict of acquittal in the defendant's favor where the state presented no direct evidence that Lollis was involved in setting fire to his home. The only circumstantial evidence against Lollis was that his wife admitted to the arson, he had placed valuables in storage prior to the fire, he possessed a key to the storage unit, and he allegedly had financial troubles. Our state supreme court found this evidence insufficient. Lollis, 343 S.C. at 584-585, 541 S.E.2d at 256-257.

In State v. Arnold, 361 S.C. 386, 389, 605 S.E.2d 529, 530-31 (2004), the defendant's fingerprint was found on a coffee cup in a car borrowed by the victim. The victim disappeared

after leaving his office in Savannah, Georgia, and his body was found three days later in Colleton County. Id. at 388, 605 S.E.2d at 530. The borrowed car was found in Johnson City, Tennessee near where the defendant called another witness the day after the crime. Id. at 388-89, 605 S.E.2d at 530. The defendant and the victim had been sexual partners. Id. The Supreme Court held that a directed verdict should have been granted because the fingerprint only established that defendant “was in the borrowed [car] on the same day the victim was last seen alive.” Id. at 390, 605 S.E.2d at 531. The fact that the car was found in Tennessee near the defendant only raised “a suspicion of guilt.” Id.

In State v. Bostick, 392 S.C. 134, 141, 708 S.E.2d 774, 778 (2011), the Court held the prosecution failed to present substantial circumstantial evidence of Bostick’s guilt. Rather, the state’s evidence was capable of producing only a suspicion of Bostick’s guilt. Id. Although the police found items belonging to the victim in a burn pile behind the home of Bostick’s mother, the Court held no evidence linked Bostick to the evidence in the burn pile and the prosecution presented no testimony that Bostick had control over the burn pile. Id. at 137-141, 708 S.E.2d at 775-778. The only other evidence presented against Bostick was that he had a chemical pattern that matched gasoline on his shoes and gasoline was used to start the fire at the victim’s home, and DNA from blood on Bostick’s jeans excluded ninety-nine percent of the population, but the expert could not testify the DNA matched the victim. Id. at 142, 708 S.E.2d at 778.

In State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2012), the Court held the defendant was entitled to a directed verdict based upon a lack of substantial circumstantial evidence that the defendant was involved in the burglary. Although Odems was in a car with other individuals who admittedly burglarized a home, the state failed to provide substantial circumstantial evidence that Odems was present during the home invasion. The witness who saw individuals at the home

claimed she saw two, not three as were found in the car. Fingerprints collected from the stolen goods did not match Odems, but matched the other individuals in the car. One of the individuals who admitted his involvement claimed Odems was picked up after the burglary at a gas station. Id. at 588, 720 S.E.2d at 51. As explained by the Odems Court, although our courts have abandoned the traditional circumstantial evidence jury charge, the language of the charge is instructive in making a directed verdict determination. The traditional charge provided:

Every circumstance relied upon by the State be proven beyond a reasonable doubt; and ... all of the circumstances proven be consistent with each other and taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis.

Id. at 590, 720 S.E.2d at 52 (quoting State v. Hernandez, 382 S.C. 620, 626 n.2, 677 S.E.2d 603, 606 n.2 (2009)).

The state alleged Appellant murdered his mother and built its case upon weak circumstantial evidence. The state argued Appellant's selling of jewelry at the pawn shop the day after Bataille's death was evidence that Appellant was the offender. This evidence was refuted by the state's own witness, Brenda Kean. Kean, who had been romantically involved with Appellant for over ten years and with whom Appellant shared a child, explained that Bataille's mother cared for Appellant and helped him. R. 139, ll. 14-23; R. 151, ll. 1-2. Kean, the state's own witness, testified that Bataille had given jewelry to Appellant. R. 151, ll. 3-6. Appellant corroborated Kean's testimony when he told the jurors that his mother had given him the jewelry years earlier. R. 293, l. 24 – R. 295, l. 18.

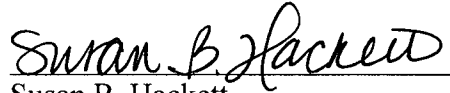
Additionally, the state claimed the evidence pointing to Appellant as the culprit was his use of Bataille's debit card. Again, the state's own witness – Kean – disputed this claim. Bataille, according to Kean, allowed Appellant to use her debit card because he had no bank account. R. 151, ll. 9-16. Appellant confirmed that he would give cash to his mother, who

would place the cash in her bank account and permit Appellant to use her debit card. R. 304, ll. 8-21.

Finally, the state argued Appellant's blood found on his bedroom door was proof that he killed the deceased. However, the state could not provide any evidence of when the blood was placed on the door or the circumstances under which the blood was placed on the door. The fact that Appellant's DNA was found in his own home, on the door to his own bedroom no less, was an unsurprising and non-incriminating fact. The police never even found a murder weapon. The only evidence against Appellant was the state's suggestion that he was guilty because he did not react in the way the state thought he should react upon finding the dead body of his mother. The state simply failed to present substantial circumstantial evidence of Appellant's guilt. The trial judge erred when he denied Appellant's motion for directed verdict.

CONCLUSION

Appellant respectfully requests this Court direct a verdict of acquittal on the charges of murder, armed robbery, and possession



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 29th day of March, 2017.

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IN THE COURT OF APPEALS

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J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARK ALLEN BRADBERRY, SR.

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Mark Allen Bradberry states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent Appellant.
2. She has reviewed the record of Appellant's trial before Judge J. Derham Cole, which was held on June 20-22, 2016, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. Pursuant to Anders v. California, 386 U.S. 738 (1967), she has briefed an arguable legal issue which arose during the course of the trial.

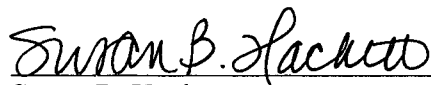
WHEREFORE, she asks the Court to relieve her as counsel for Mark Allen Bradberry.

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SC Court of Appeals

Respectfully Submitted,



Susan B. Hackett

Appellate Defender

ATTORNEY FOR APPELLANT

This 29th day of March, 2017.

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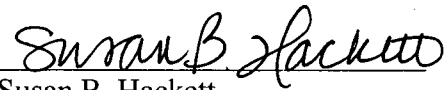
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Entire trial transcript dated June 20-22, 2016;
- (2) True-billed indictments (2015-GS-42-445; -446); and
- (3) Sentence sheets.

I certify that this designation contains no matter which is irrelevant to this appeal.

March 29, 2017


Susan B. Hackett
Appellate Defender

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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."

March 29, 2017.



Susan B. Hackett
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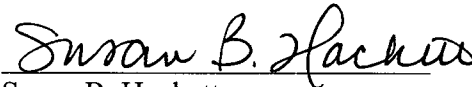
V.

MARK ALLEN BRADBERRY, SR.

APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert C. Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Mark Allen Bradberry, #368749, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 29th day of March, 2017.

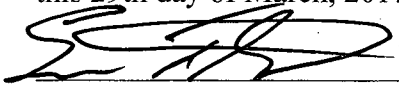


Susan B. Hackett

Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 29th day of March, 2017.



(L.S)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.

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SC Court of Appeals