

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

Lee S. Alford, Circuit Court Judge

THE STATE,

RESPONDENT;

V.

MICHAEL BAYRON,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

RECEIVED
JUL 02 2012
SC Court of Appeals

TABLE OF CONTENTS

TABLE OF CONTENTS.....1

TABLE OF AUTHORITIES.....2

STATEMENT OF ISSUE ON APPEAL.....3

STATEMENT OF THE CASE.....4

ARGUMENT.....5

CONCLUSION.....8

PETITION TO BE RELIEVED AS COUNSEL.....9

CERTIFICATE OF COUNSEL.....10

TABLE OF AUTHORITIES

Cases

<u>Evans-Smith v. Taylor</u> , 19 F.3d 899, 906 (4 th Cir. 1994)	7
<u>Jackson v. Virginia</u> , 443 U.S. 307, 99 S.Ct. 2781(1979).....	6
<u>State v. Brown</u> , 267 S.C. 311, 227 S.E.2d 674, 677 (1976)	6
<u>State v. Edwards</u> , 298 S.C. 272, 379 S.E.2d 888 (1989), <u>cert. denied</u> , 493 U.S. 895, 110 S.Ct. 246 (1989).....	6
<u>State v. Littlejohn</u> , 228 S.C. 324, 89 S.E.2d 924, 926 (1955).....	6
<u>State v. Matarazzo</u> , 262 S.C. 662, 207 S.E.2d 93, cert. denied, 420 U.S. 945 (1974).....	7
<u>State v. Totherow</u> , 263 S.C. 275, 210 S.E.2d 228, 230 (1974).....	6
<u>State v. Turner</u> , 117 S.C. 470, 109 S.E. 119, 120 (1921)	6
<u>United States v. Ortiz</u> , 445 F.2d 1100, 1103 (10 th Cir. 1971).....	7
<u>United States v. Varoz</u> , 740 F.2d 772, 775 (10 th Cir. 1984)	7

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to grant a directed verdict to the charge of pointing and presenting a firearm when the State failed to present any substantial evidence beyond a reasonable doubt that appellant committed the offense?

STATEMENT OF THE CASE

Appellant was convicted of pointing and presenting a firearm after a jury trial held before the Honorable Lee. S. Alford on November 30 – December 1, 2011. Appellant was sentenced to five (5) years suspended upon service of six (6) months with two (2) years probation thereafter. Amy Sikora was trial counsel. Marina Bender-Hamilton was solicitor.

This appeal follows.

ARGUMENT

The trial court erred in refusing to grant a directed verdict to the charge of pointing and presenting a firearm because the State failed to present any substantial evidence beyond a reasonable doubt that appellant committed the offense.

The State's theory of the case was that on the night of June 23, 2011, appellant and his wife were having a domestic dispute and appellant ended up pointing and presenting a firearm at his wife. (ROA p. 93, line 23 – p. 96, line 96). The State, however, failed to present appellant's wife, Claribel Correa, the key witness to the alleged event as their own witness. Instead, she testified for the defense.

She testified that appellant had recently become unemployed and they were going to be evicted on June 24. She and appellant were discussing financial issues and it turned into an argument. She ended up calling 911 and told them appellant pointed a gun at her. She also told them he did not hit her but later she said he did do so. (ROA p. 169, line 6 – p. 171, line 5). She was asked if the police asked her if appellant pointed a gun at her and she said she told them he did not. (ROA p. 173, line 24 – p. 174, line 3). She said appellant never had a gun that night in her presence. (ROA p. 175, line 7-9).

Correa said she asked the solicitor's office to dismiss the charges against her husband and she signed a drop warrant form. (ROA p. 179, lines 12-17). She testified that she lied when she made the 911 call and when she gave a statement to the police because she was mad at her husband. (ROA p. 180, line 16 – p. 181, line 13).

At the close of the State's case, defense counsel moved for a directed verdict of the charge of pointing and presenting a firearm. (ROA p. 158, line 9 – p. 159, line 10). That

motion was renewed after the victim testified for the defense. The trial court refused to grant the motion. (ROA p. 214, line 19 – p. 216, line 7). That ruling was in error.

Due process as guaranteed by the Fourteenth Amendment requires “that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof—defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense.” Jackson v. Virginia, 443 U.S. 307, 316, 99 S. Ct. 2781, 2787 (1979).

Our Court has held:

[T]he trial judge is concerned with the existence or non-existence of evidence, not with its weight; and, although he should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced. [Emphasis added].

State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924, 926 (1955); State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989), cert. denied, 493 U.S. 895, 110 S. Ct. 246 (1989).

In applying this standard, our Court has held that evidence which is “sufficient to raise a strong suspicion of the guilt of the accused” is not sufficient to constitute “any evidence from which the guilt of the accused may be fairly and logically deduced.” State v. Totherow, 263 S.C. 275, 210 S.E.2d 228, 230 (1974). See, also, State v. Turner, 117 S.C. 470, 109 S.E. 119, 120 (1921). The motion for a directed verdict should be granted, therefore, “where evidence merely raises a suspicion of guilt, or is such to permit the jury to merely conjecture or to speculate as to the accused’s guilt.” State v. Brown, 267 S.C. 311, 227 S.E.2d 674, 677 (1976), citing State v. Matarazzo, 262 S.C. 662, 207 S.E.2d 93,

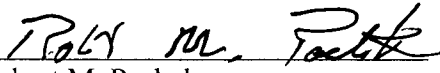
cert. denied, 420 U.S. 945 (1974). “If the evidence is consistent with both innocence and guilt it cannot support a conviction.” United States v. Varoz, 740 F.2d 772, 775 (10th Cir. 1984); United States v. Ortiz, 445 F.2d 1100, 1103 (10th Cir. 1971). Guilt is only to be found when there is a “rationally supportable state of near certitude.” Evans-Smith v. Taylor, 19 F.3d 899, 906 (4th Cir. 1994).

In this case the evidence was consistent with both innocence and guilt and the case should not have gone to the jury.

CONCLUSION

A directed verdict should be granted in appellant's behalf.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of July, 2012.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Lee S. Alford, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL BAYRON,

APPELLANT

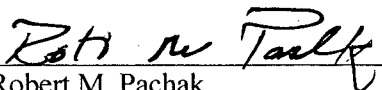
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Michael Bayron 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 Lee S. Alford, which was held on December 1, 2011, 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 Michael Bayron.

Respectfully submitted,


Robert M. Pachak
Appellate Defender

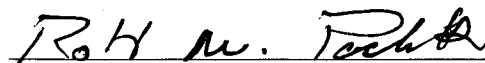
ATTORNEY FOR APPELLANT

This 2nd day of July, 2012.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

July 2nd, 2012



Robert M. Pachak
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Lee S. Alford, Circuit Court Judge

THE STATE,

RESPONDENT,

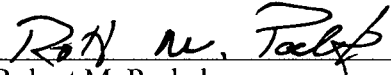
V.

MICHAEL BAYRON,

APPELLANT

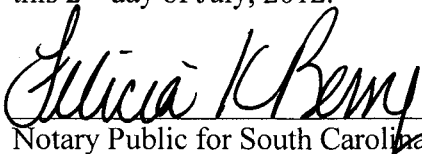
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Final Anders Brief of Appellant and Record on Appeal has been served on Michael Bayron, at 1608 Bradford Court, Rock Hill, SC 29732; this 2nd day of July, 2012.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 2nd day of July, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: June 21, 2020