

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

ORIGINAL

RECEIVED

MAR 22 2017

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JASON ANDREW CASH,

APPELLANT

APPELLATE CASE NO 2017-000637

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) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

ARGUMENT3

CONCLUSION.....6

PETITION TO BE RELIEVED AS COUNSEL.....7

TABLE OF AUTHORITIES

Cases

<u>Evans-Smith v. Taylor</u> , 19 F.3d 899, 906 (4 th Cir 1994).....	4
<u>Jackson v. Virginia</u> , 443 U.S. 307, 316 S.Ct. 2781 (1979).....	4
<u>State v. Brown</u> , 267 S.C. 311, 227 S.E.2d 674 (1976)	4
<u>State v. Collins</u> , 266 S.C. 566, 225 S.E. 2d 189 (1976).....	5
<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).....	4
<u>State v. Johnson</u> , 291 S.C. 127, 352 S.E. 2d 480 (1987)	5
<u>State v. Lenard</u> , 292 S.C. 133, 355 S.E. 2d 270 (1987)	5
<u>State v. Littlejohn</u> , 228 S.C. 324, 89 S.E.2d 924 (1955).....	4
<u>State v. Matarazzo</u> , 262 S.C. 662, 207 S.E.2d 93, <u>cert. denied</u> , 420 U.S. 945 (1974).....	4
<u>State v. Totherow</u> , 263 S.C. 275, 210 S.E.2d 228 (1974).....	4
<u>State v. Turner</u> , 117 S.C. 470, 109 S.E. 119 (1921)	4
<u>United States v. Ortiz</u> , 445 F.2d 1100, 1103 (10 th Cir 1971).....	4
<u>United States v. Varoz</u> , 740 F.2d 772, 775 (10 th Cir. 1984).....	4

STATEMENT OF ISSUE ON APPEAL

Whether the trial court should have granted a directed verdict on the charges appellant was tried for when he was merely present at the crime scene?

STATEMENT OF THE CASE

Appellant was convicted of murder, attempted murder, burglary in the first degree, armed robbery, and kidnapping after a jury trial held before the Honorable J. Derham Cole on February 27- March 2, 2017, in Spartanburg County. Appellant was sentenced to life imprisonment for murder, to thirty (30) consecutive years for attempted murder, to life imprisonment for burglary in the first degree, and to thirty (30) years for armed robbery. Travis Moore, Esq. was defense counsel. Derrik Balsa, Esq. and Nicholas Sharpe, Esq. were the solicitors.

This appeal follows.

ARGUMENT

The trial court erred in denying a directed verdict on the charges appellant was tried for because he was just merely present at the scene of the crimes.

Casey Scruggs was the female victim of an attempted murder and was the key witness for the state. She testified at the time of the incident she lived on Highway 11 in Chesnee with her fiancé Carey Mualdin who was murdered the same day. (R. p. 162, line 25- p. 163, line 13). She had known appellant for two months. A co-defendant who was not being tried at the time was called Scooter. They met him about a month ago. (R. p. 164, line 20- p. 165, line 6).

On May 22, appellant called and wanted to come by and get a “fix.” When he got to the house she heard a ruckus and then she heard Carey say, “Baby, call 9-1-1.” (R. p. 166, lines 2-11). She could not see anybody. As soon as she grabbed the phone she saw Scooter. She was in the bedroom and Scooter ran in. (R. p. 167, lines 1-5). Before he ran in she heard two gunshots. She could not tell where they came from in the house. It was after the gunshot that Scooter ran into her room. He flipped her over in bed and began tying her up with duct tape. He was wearing blue latex gloves. (R. p. 169, line 7- p. 170, line 4).

Casey Scruggs got off the bed later and hobbled to the front of the house. She tried to open the door but it was dead-bolted. She saw appellant outside. Scooter ran and dragged her through the front of the house and threw her down. Appellant then came back inside. (R. p. 172, line 22- p. 173, line 18). She said she was shot but she did not see who shot her. A bullet grazed her head. After the shots were fired the two men left. (R. p. 174, line 9- p. 175, line 18).

At the conclusion of the State’s case defense counsel moved for a directed verdict on all of the charges. (R. 306, lines 4-17). The trial court denied the motion. (R. p. 307, lines 11- p. 308, line 9). 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).

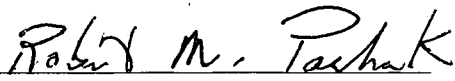
In applying this standard, our Court has held that evidence which is “sufficient to raise a strong suspicion of the guilt of the accused” is not sufficient to constitute “any evidence from which the guilt of the accused may be fairly and logically deduced.” State v. Totherow, 263 S.C. 275, 210 S.E.2d 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).

The State showed that Scooter committed the crimes but only that appellant was merely present at the scene. Mere presence does not constitute a crime. State v. Lenard, 292 S.C. 133, 355 S.E. 2d 270 (1987); State v. Johnson, 291 S.C. 127, 352 S.E. 2d 480 (1987). Prior knowledge that a crime may be committed is insufficient to convict a person. State v. Collins, 266 S.C. 566, 225 S.E. 2d 189 (1976).

CONCLUSION

A directed verdict should be granted to all of appellant's charges.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 22nd day of August, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JASON ANDREW CASH,

APPELLANT

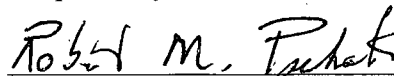
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jason Andrew Cash 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 J. Derham Cole, which was held on February 27, 2017 - March 2, 2017, 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 Jason Andrew Cash.

Respectfully Submitted,



Robert M. Pachak

Appellate Defender

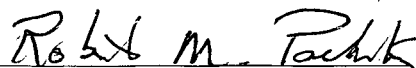
ATTORNEY FOR APPELLANT

This 22nd 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 22, 2017.


Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

RECEIVED

AUG 22 2017

SC Court of Appeals

THE STATE,

RESPONDENT,

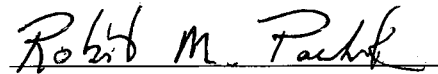
V.

JASON ANDREW CASH,

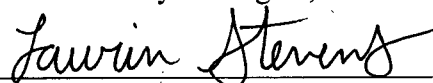
APPELLANT

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 Donald J. Zelenka, 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 Jason Andrew Cash, #347420, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 22nd day of August, 2017.


Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 22nd day of August, 2017.

 (L.S)
Notary Public for South Carolina
My Commission Expires: July 5, 2027