STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY

Court of General Sessions
Hon. Perry M. Buckner, Circuit Court Judge

Appellate Case No. 2017-001290

THE STATE,

Respondent,

v.

ERNEST RAY BAILEY,

Appellant.

INITIAL BRIEF OF RESPONDENT

RECEIVED
APR 12 2018
SC Court of Appeals

ALAN WILSON
Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ISAAC MCDUFFIE STONE
Solicitor, Fourteenth Judicial Circuit

Post Office Box 1880
Bluffton, South Carolina 29910
(843) 255-5880

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 2

STATEMENT OF FACTS 3

ARGUMENT 5

I. The trial court did not err by denying Appellant's motion for a directed verdict because the State produced evidence that Appellant assumed the role of a parent or guardian and put victims at an unreasonable risk of harm. 5

CONCLUSION 9

TABLE OF AUTHORITIES

Cases

State v. Jenkins, 278 S.C. 219, 294 S.E.2d 44 (1982) 7

State v. Palmer, 413 S.C. 410, 776 S.E.2d 558 (2015) 7

State v. Weston, 367 S.C. 279, 625 S.E.2d 641 (2006) 5

State v. Williams, 405 S.C. 263, 747 S.E.2d 194 (Ct. App. 2013) 6

Statutes

S.C. Code § 63-5-70 5

S.C. Code § 63-7-20 (18) 6

STATEMENT OF ISSUES ON APPEAL

I.

Whether the trial court erred by refusing to direct a verdict for Appellant where the State produced evidence that Appellant assumed the role of a parent and put victims at an unreasonable risk of harm.

STATEMENT OF THE CASE

A Colleton County grand jury indicted Appellant for one count of Unlawful Conduct Towards a Child. Appellant proceeded to trial before the Honorable Perry M. Buckner on May 22, 2017. Appellant was represented by David Mathews, Esquire. Respondent (the State) was represented by Assistant Solicitor Reed Evans. Appellant was convicted and sentenced to a term of seven years' incarceration, suspended upon the completion of two years of probation with credit for 335 days of time served. This appeal follows.

STATEMENT OF FACTS

Appellant was in a romantic relationship with Loma Jones for three years. Tr. 85; 104; State's Exhibit 16. Appellant lived with Jones and her twelve- and thirteen-year-old grandsons at her residence in Walterboro. Tr. 85-86; 33. Jones had legal custody of the grandchildren, whom had been removed from their mother's custody at a young age. Tr. 86.

On June 21, 2016, Tiffany Fargnoli, an investigator with the Department of Social Services, visited the home to investigate a report of possible child abuse or neglect. Tr. 102. Appellant refused to allow her to enter the home. Tr. 104. Fargnoli returned a short time later accompanied by law enforcement. Tr. 105. Fargnoli inspected the home and interviewed the children. Tr. 105. She observed holes in the children's bedroom doors where latching locks had been installed from the outside. Tr. 105. The children told Fargnoli that Appellant removed the locks from the doors between her first and second visits. Tr. 105; 77. Fargnoli also observed locks on the refrigerator, freezers, and kitchen cabinets. Tr. 106. There was an air conditioning unit in the living room and the adults' bedroom, but none in the children's rooms. Tr. 106. The children's bedroom windows had been nailed shut. Tr. 112; 71. The children had not bathed for over a month, and smelled of body odor. Tr. 108. Fargnoli observed buckets outside the home containing fresh water. Tr. 106.

According to Jones and the children, Appellant was in charge when Jones was not home. Tr. 69-70; 87; 133. Jones had a job, but Appellant did not. Tr. 133. The children testified Appellant would often lock them in their rooms without air conditioning or circulation for extended periods of time. Tr. 73; 88. The rooms became very hot because the windows were nailed shut. Tr. 89. The children were given buckets to urinate and defecate in, even though there was a bathroom across the hall. Tr. 73-74; 90. Although the children could unlock the

latch from the inside using a book or paper, one child testified he used the bucket instead of sneaking out because he feared what would happen if Appellant caught him. Tr. 90.

Appellant admitted he removed the buckets from their rooms between Fargnoli's first and second visits. Tr. 77. He told police the children were kept locked in their rooms because of disciplinary problems, and the food was locked up so the boys wouldn't "steal" it. State's Exhibit 16; State's Exhibit 1. Appellant admitted that the children were made to urinate and defecate in buckets left in the room. Tr. 130. Appellant told police that he was acting according to Jones' wishes. State's Exhibit 16. Defense counsel argued that this treatment was justified because "these were not good children." Tr. 65.

ARGUMENT

I.

The trial court did not err by denying Appellant's motion for a directed verdict because the State produced evidence that Appellant assumed the role of a parent or guardian and put victims at an unreasonable risk of harm.

Appellant claims the trial court erred by refusing to grant a directed verdict on the grounds that the State produced no evidence that Appellant assumed the role of a parent or guardian or placed the child victims at an unreasonable risk of harm. However, the record shows the State did produce evidence of both of these facts. Therefore, a directed verdict was not appropriate and the court committed no error.

"When ruling on a motion for a directed verdict, the trial court is concerned only with the existence of evidence, not its weight. A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. When reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State. If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, this Court must find the case was properly submitted to the jury." *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006).

Appellant was charged under S.C. Code § 63-5-70, which makes it unlawful to "place [a] child at unreasonable risk of harm affecting the child's life, physical or mental health, or safety." S.C. Code § 63-5-70 (A)(1). The statute applies to parents, guardians, and any "person responsible for a child's welfare." S.C. Code § 63-5-70 (A). This includes "an adult who has assumed the role or responsibility of a parent or guardian for the child, but who does not necessarily have legal custody of the child." S.C. Code § 63-7-20 (18). It does not include "a person whose only role is as a caregiver and whose contact is only incidental with a child, such

as a babysitter or a person who has only incidental contact but may not be a caretaker." S.C. Code Ann. § 63-7-20 (18).

In *State v. Williams*, 405 S.C. 263, 747 S.E.2d 194 (Ct. App. 2013), this Court found that the trial court properly denied a motion for directed verdict where the State produced evidence that Williams: (1) had been dating the child's mother for four months; (2) stayed overnight with mother and child between two and four nights a week; (3) discussed moving in and stated that he wanted to be child's stepfather; and (4) performed parental duties such as changing the child's diapers and watching her while the mother was busy. *State v. Williams*, 405 S.C. 263, 280, 747 S.E.2d 194, 203 (Ct. App. 2013). The court found that "Williams's involvement in Victim's life was some evidence that he has assumed the role of a parent." *Id.*

Similarly in this case, the State produced evidence that Appellant performed parental duties, such as watching the children while their grandmother was at work. Both children testified that Appellant was "in charge" when their grandmother wasn't around. Tr. 69-70; 87. Jones corroborated this to police. Tr. 133. Even Appellant admitted that he was in charge when Jones was not home. State's Exhibit 16. When asked "who was in charge of y'all at this house," one child answered "My grandma and Ray." Tr. 87. The other child answered "Loma or him." Tr. 70. Appellant was a permanent resident and stayed Jones' bedroom, not merely a frequent guest as in *Williams.* Tr. 89, ll. 18-20. The home situation was essentially that of a nuclear family. This evidence, when viewed in the light most favorable to the State, reasonably tended to prove that Appellant assumed the role of a parent or guardian. Because the State produced evidence of this element of the crime, the motion for directed verdict was properly refused on this ground.

Likewise, the State produced evidence that Appellant put the minor victims at an unreasonable risk of harm affecting the children's physical or mental health or safety. The State produced evidence that (1) the minors were locked in hot rooms for extended periods of time; (2) the rooms had no air conditioning or circulation, even in the month of June; (3) the boys were made to urinate and defecate in a bucket, even though there was a bathroom across the hall; (4) that at least one of the children feared Appellant; (5) the boys had not been bathed for over a month; and (6) the household food was kept locked up so the boys could not eat unless given food. This evidence tended to prove that the boys' physical and mental health was put at risk by this inhumane and unsanitary treatment, the ultimate determination of which was a factual question for the jury. *See State v. Palmer,* 413 S.C. 410, 421, 776 S.E.2d 558, 564 (2015) (holding question whether defendant put child at risk of harm was for the jury); *State v. Jenkins*, 278 S.C. 219, 223, 294 S.E.2d 44, 46 (1982) (holding question whether defendant's actions constituted child neglect was for the jury). The trial court properly refused to grant a directed verdict on this ground.

Because the State produced evidence that Appellant assumed the role of a parent or guardian and put the minor victims at an unreasonable risk of harm, the trial court properly denied Appellant's motion for a directed verdict. The determination of this issue was a question of fact properly left to the jury. The issue is without merit, and the conviction and sentence of the lower court should be affirmed.

CONCLUSION

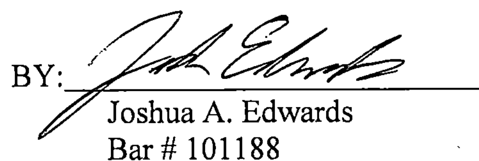
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General

ISAAC MCDUFFIE STONE
Solicitor, Fourteenth Judicial Circuit

BY: 
Joshua A. Edwards
Bar # 101188

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

April 12, 2018

RECEIVED
APR 12 2018
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Colleton County
The Honorable Perry M. Buckner, Circuit Court Judge

Appellate Case No: 2017-001290

THE STATE,

Respondent,

v.

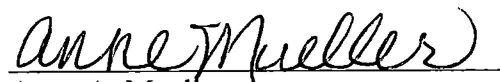
ERNEST RAY BAILEY,

Appellant.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by delivering two copies of the same to Susan B. Hackett, Esquire, S.C. Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589.

I further certify that all parties required by Rule to be served have been served.
This 12th day of April, 2018.



Anne A. Mueller
Legal Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ALAN WILSON
ATTORNEY GENERAL

RECEIVED
APR 12 2018
SC Court of Appeals

April 12, 2018

Susan B. Hackett, Esquire
SCCID, Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211

Re: **The State v. Ernest Ray Bailey**
Appellate Case No: 2017-001290

Dear Ms. Hackett:

Enclosed please find two copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Joshua A. Edwards
Senior Assistant Attorney General
S.C. Bar No: 101188

JAE/aam
Enclosures

cc: The Honorable Jenny A. Pickens (with original and 1 copy)
Victim Advocacy Division

RECEIVED
APR 12 2018
SC Court of Appeals