

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

 ORIGINAL

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

RECEIVED

JUN 25 2010

KENDEAL JONES,

S.C. SUPREME COURT

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-002556

ANDERS BRIEF OF APPELLANT
PURSUANT TO WHITE V. STATE

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¹ The trial transcript contains no reference to directed verdict or new trial motions from trial counsel.

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in allowing appellant's burglary and robbery convictions to stand because the convictions appeared to have been decided on a guilt by association ground rather than proof of every element of the offenses charged beyond a reasonable doubt.²

² The trial transcript contains no reference to directed verdict or new trial motions from trial counsel.

STATEMENT OF THE CASE

Appellant Kendeal Jones was convicted of first degree burglary and three counts of armed robbery per jury trial held during the March 2011 term of the Spartanburg County General Sessions Court before Judge J. Mark Hayes, II. Appellant was sentenced to imprisonment for an aggregate period of twenty-five years. Max Singleton represented appellant at trial³ and Assistant Solicitor Derrick Balsa appeared on behalf of the state. App. 1-273. Appellant did not enjoy the benefit of a direct appeal in the case.

On December 9, 2011, appellant filed a PCR application with the Spartanburg County Office of the Clerk of Court. App. 279-292. The respondent filed a return dated November 27, 2012, requesting that a hearing be held in response to appellant's PCR action. App. 293-296.

PCR hearings were convened on October 2, 2013, and January 22, 2014, at the Spartanburg County Courthouse before Judge J. Derham Cole. App. 298-325; App. 329-344. Appellant was represented by Charles L. Rollins at both PCR hearings and Suzanne H. White appeared at both hearings on behalf of the state.

On December 12, 2017, Judge Cole signed an Order of Dismissal Granting White v. State Appeal, but dismissed appellant's remaining PCR claims in the case. App. 346-355. Appellant appealed. This brief follows.

³ Petitioner was tried along with codefendant Chavis Pullen.

STANDARD OF REVIEW

State v. Hepburn, 406 S.C. 416, 753 S.E.2d 402 (2013). In cases where the State has failed to present evidence of the offense charged, a criminal defendant is entitled to a directed verdict. State v. Cherry, 361 S.C. 588, 593, 606 S.E.2d 475, 478 (2004). During trial, “[w]hen ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, no its weight.” Id. at 593, 606 S.E.2d at 477-78 (citing State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002)); see also Rule 19(a), SCRPC. The trial court should “grant the directed verdict motion when the evidence merely raised a suspicion that the accused is guilty as ‘[s]uspicion’ implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof.” Cherry, 361 S.C. at 594, 606 S.E.2d at 478 (citations omitted). On the other hand, “a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.” Id. (emphasis removed).

On appeal, “[w]hen reviewing a denial of a directed verdict, this Court must view the evidence and all reasonable inferences in the light most favorable to the state.” Id. (citing State v. Burdette, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999)); see also State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)(finding that when ruling on cases in which that state has relied exclusively or circumstantial evidence, appellate courts are likewise only concerned with the existence of the evidence and not its weight). If the state has presented “any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused,” this Court must affirm the trial court’s decision to submit the case to the jury. Cherry, 361 S.C. at 593-594, 606 S.E.2d at 478; cf. Mitchell, 341 S.C. at 409, 535 S.E.2d at 127 (“The trial judge is required to submit the case to the jury if there is ‘any substantial evidence which reasonably tends to prove the guilt of the accused, or from which guilt may be fairly and logically deduced.’”)

ARGUMENT

The trial judge erred in allowing appellant's burglary and robbery convictions to stand because the convictions appeared to have been decided on a guilt by association ground rather than proof of every element of the offenses charged beyond a reasonable doubt.⁴

The state's theory was that appellant was guilty as charged via accomplice liability because after gaining entry into the apartment in question, he quickly exited, but behind him appeared two gunman who entered the apartment immediately thereafter and went on to take money from the adults present inside. Rhashawn Middleton, Nelson Middleton, and Terrance Moates were all seated inside the apartment and claimed to have been robbed by the two gunmen. This event occurred on June 11, 2009.

A.) Rhashawn Middleton's Trial Testimony

At trial, Rhashawn Middleton testified that she and her brother Nelson Middleton and her boyfriend Terrance Moates were all seated inside her apartment on the evening in question when appellant appeared at her door, entered and asked for change for a bill, and later appellant moved to his exit through the back door. Then, when Terrance Moates stood and went to the kitchen to get change, two gunmen (one wearing a mask and another wearing a bandana) burst through the door after appellant exited and demanded that everyone get down on the floor. Middleton stated that she recognized one gunman as Koolaid, aka Chavis Pullen. Chavis Pullen was tried along with appellant at the trial. Middleton stated that she believed the other gunman was Duck aka Derrick Goggins. Pullen made threats and followed Moates into the kitchen and soon thereafter a gunshot was fired. Then, when Pullen came out of the kitchen, apparently the other gunman's

⁴ The trial transcript contains no reference to directed verdict or new trial motions from trial counsel.

gun “jammed.” and the two men fled. Middleton claimed that the gunmen took \$5.00 and cellphones. App. 68, l. 17 – p. 82, l. 16.

B.) Nelson Middleton’s Trial Testimony

Rhashawn Middleton’s brother Nelson Middleton testified that he was at the apartment when the events in question occurred, and that he witnessed appellant’s entrance into the apartment and the entrance of two gunmen immediately following appellant’s entrance and exit. After being told to get down on the floor, one of the gunman took his (Nelson’s) wallet containing \$20.00. Nelson added that he heard a gunshot fired from the kitchen where Moates and the other gunman were located. App. 122, l. 5 – p. 126, l. 17.

C.) Terrance Moates’ Trial Testimony

Rhashawn’s boyfriend Terrance Moates testified that he was present at the apartment when the incident occurred and explained that he went into the kitchen to get change per appellant’s request, and that while there, Moates stated that he heard someone say “you know what this is” get down on the ground” and then he saw Chavis Pullen come into the kitchen demanding money. Moates stated that he had no money. Pullen responded by hitting Moates with his (Pullen’s) gun and the gun fired. Soon afterwards, the two gunmen fled. They took ten dollars. App. 132, l. 4 – p. 140, l. 8; App. 142, l. 8-22; App. 142, l. 25 – p. 143, l. 5.

Clearly, the two gunmen committed the offenses of burglary and robbery, but apparently, appellant’s charges were bootstrapped to the two gunmen’s crimes via guilt by mere association despite the fact that appellant was merely present only briefly before the crimes occurred.⁵ All three of the state’s witnesses testified that appellant walked in the apartment and walked out

⁵ Note that the trial judge properly charged the jury that mere presence did not constitute guilt and prior knowledge that a crime was going to be committed without more was insufficient to constitute guilt. App. 247, l. 7 – p. 248, l.12. See State v. Condrey, 349 S.C. 184, 562 S.E.2d 320 (2002).

through the back. Tr. 79, l. 10 – Tr. 80, l. 10; Tr. 142, l. 13 – p. 143, l. 7; Tr. 129, l. 16 – p. 131, l. 19. Therefore, what happened with the two gunmen after appellant walked in and exited out should not have been attributed to appellant via guilt by association. Note Rashawn Middleton testimony as follows:

Q. [Did you believe] that they all three were involved together in this scheme or whatever was going on?

A. Yes. Tr. 118, l. 9-12.

Q. You just assumed that they all...these were the people and they were all involved together?

A. Well, at first I didn't think [appellant] would do it, but the after I started...yes..afterwards then yes. Tr. 118, l. 21 – p. 119, l. 1.

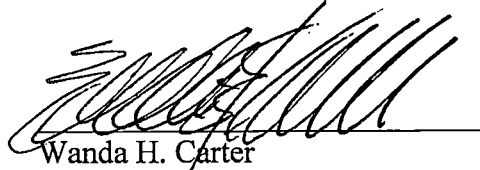
Q. You're making this assumption just because [co-defendant Pullen and appellant] know each other?

A. Yes. App. 119, l. 19-21.

The United States Supreme Court has held that a member cannot be held liable for the association's illegal activities unless he or she participated in those activities with the specific intent to further the legal liability. See NAACP v. Claiborne Hardware, 458 U.S. 886 (1982). The state presented guilt by association evidence only and failed to present sufficient evidence of proof beyond a reasonable doubt of all elements of the offenses charged against appellant. See Jackson v. Virginia, 443 U.S. 307 (1979). A judge should grant a directed verdict motion when there is a mere suspicion that the accused is guilty. State v. Moore, 374 S.C. 468, 649 S.E.2d 84 (2007).

CONCLUSION

Based on the foregoing argument, counsel for appellant requests that his convictions and sentences be vacated.

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 25th day of June, 2018.

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IN THE SUPREME COURT

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Honorable J. Derham Cole, Circuit Court Judge

KENDEAL JONES,

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RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Kendeal Jones states that:

1. She is Deputy Chief 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 October 2, 2013, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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, She asks the Court to relieve her as counsel for Kendeal Jones.

Respectfully Submitted,



Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 25th day of June, 2018.

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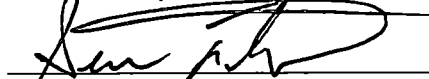
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant pursuant to White v. State in the above referenced case has been served upon Jordan Cox, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant pursuant to White v. State have been served on Kendal Jones, 282573, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 25th day of June, 2018.


Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 25th day of June, 2018.



(L.S)
Notary Public for South Carolina
My Commission Expires: 10/30/2022.