

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable D. Craig Brown, Circuit Court Judge

ORIGINAL

THE STATE,

RESPONDENT,

V.

MUTTAQIN FATIR ABDULLAH,

APPELLANT

APPELLATE CASE NO 2016-002217

ANDERS BRIEF OF APPELLANT

RECEIVED

OCT 05 2018

SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying Appellant Abdullah's motion for a directed verdict when the state did not prove that the bullets that killed David Way and wounded Marell McBride were from the gun allegedly possessed by Appellant?

STATEMENT OF THE CASE

On May 12, 2016, the Sumter County Grand jury indicted Muttaquin Fatir Abdullah on the charges of murder, assault and battery with intent to kill, the possession of a pistol by a person convicted of a crime of violence, and possession of a weapon during the commission of a violent crime. On October 17-21, 2016, Appellant Abdullah proceeded to trial before the Honorable D. Craig Brown and a jury. Abdullah represented himself (*pro se*), and the state was represented by Ernest A. Chip Finney, III. R. 1. The state did not proceed on the charge of possession of a weapon by a person convicted of a violent crime.¹ R. 8, ll. 21 – R. 9, ll. 3.

The jury found Appellant Abdullah guilty as indicted of murder, ABWIK, and possession of a weapon during a crime of violence. R. 485, ll. 12 – R. 486, ll. 7. The judge sentenced Abdullah to life in prison on the murder charge; twenty years on the ABWIK charge; and five years on the gun charge. All sentences were to run concurrent. R. 493, ll. 17 – R. 494, ll. 3.

Appellant Abdullah timely filed a notice of appeal. This appeal follows.

¹ Appellant Abdullah was convicted in federal court in 2004 and 2006 on violations of federal gun law. He was sentenced to twelve years. R. 488, ll. 14 – 25.

STANDARD OF REVIEW

“The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion.” State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (quoting State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” Id.; see also State v. Brockmeyer, 406 S.C. 324, 340, 751 S.E.2d 645, 653 (2013).

ARGUMENT

The trial court erred in denying Appellant Abdullah's motion for a directed verdict when the state did not prove that the bullets that killed David Way and wounded Marell McBride were from the gun allegedly possessed by Appellant.

Relevant Facts

On March 14, 2004, there was a large crowd, 600 to 700 people, at the local nightclub in Sumter named the Lion's Pit. As the club was closing, following the big event of the evening, numerous people in the parking lot fired their guns as they were leaving. The promoter of the event, Thurston Lane, said this was a usual occurrence following an event. He said the people were just shooting into the air and not shooting to hurt anyone. Lane was in charge of some of security which included some inside bouncers and outside security. Inside bouncers did not have weapons. R. 163, ll. 1 – R. 165, ll. 12; R. 139, ll. 9 – R. 140, ll. 10; R. 182, ll. 1 – 7; R. 140, ll. 7 – 12; R. 144, ll. 1 – R. 145, ll. 25.

While Lane was outside the club after taking his brother to his car, he saw a person acting nervous around the front door of the club. Then the person started shooting with a nine millimeter. Lane heard seven to nine shots. R. 149, ll. 1 – R. 154, ll. 21.

According to Coral Scott, the executive protection specialist for the event, the shooter was shooting into the crowd. Scott was outside with Lane at the time. R. 176, ll. 1 – 24; R. 193, ll. 1 – 21; R. 145, ll. 18 – R. 147, ll. 6. Scott saw the last bullet hit the top of a car. Then the bullet bounced and ricocheted and hit a young man in the back of his head. The man was standing talking to a young lady. R. 197, ll. 21 – R. 198, ll. 25.

David Way was the young man killed by the ricocheting bullet. The examining pathologist reported that the bullet entered the back of the deceased head behind his right ear,

and exited the left front of his head towards the top of his head. R. 403, ll. 1 – 17; R. 406, ll. 25 – 25.

Marell McBride was at the Lion's Pit on March 14, 2004. R. 91, ll. 1 – R. 92, ll. 14. While he was on the way to his car to leave, he fell. Then he realized that he had been shot. His cousin took him to the hospital where it was determined that he had been shot in his left hip. The bullet remained in him because it was too risky to remove it. R. 105, ll. 7 – R. 106, ll. 25.

After he was shot, McBride was able to stand and was looking for his cousin and trying to see who was shooting. He saw the shooter and his face. He identified Abdullah as the shooter. R. 107, ll. 1 – 25.

Thurston Lane followed the shooter into the club after the shooting and saw the shooter go into the bathroom. The shooter remained in the bathroom about three minutes. When he came out, he went and sat with security. Lane was trying to get all of the security together in the midst of the confusion. Lane said the shooter did not have the gun when he came out of the bathroom. When the police arrived, Lane identified Abdullah to the police as the shooter. Lane also told the police that he believed the gun was in the bathroom. R. 156, ll. 1 – R. 161, ll. 23.

Lieutenant John Monahan with the Sumter County Sheriff's Office was one of the first responders to the scene at the club. R. 207, ll. 1 – R. 208, ll. 25. When he arrived at the club, several people told the police of the shooting and several identified Abdullah as the shooter. One person told the police that he had followed the shooter to the bathroom. R. 212, ll. 20 – R. 214, ll. 6; R. 219, ll. 19 – 25.

Lieutenant Monahan and Lieutenant James Atkinson went into the bathroom to check. They found the toilet "busted" and a hole in the ceiling that looked very fresh. When Lieutenant Atkinson shined the light into the hole, they found a gun. R. 216, ll. 7 – R. 219, ll. 18.

The officers arrested Abdullah that night. R. 220, ll. 1 – R. 221, ll. 8. The Sumter County Grand Jury indicted Abdullah on the charges of murder, assault and battery with intent to kill (ABWIK), and the possession of a gun during the commission of a violent crime. See Indictment. R. 496

Abdullah represented himself at trial which he told the trial judge there was no issue regarding him representing himself. R. 14, ll. 1 – R. 15, ll. 9.

During the trial, Thurston Lane testified that he saw the shooter and the gun which was a nine millimeter. Lane identified the shooter in court as being Abdullah, R. 153, ll. 19 – R. 155, ll. 24. Lane admitted that it was possible that one of the other people shooting that night shot towards the club. R. 171, ll. 1 – 14.

Coral Scott was an “executive protection specialist” and frequently served as a bodyguard for celebrities. On the night of March 14, 2004 at the Lions’ Pit, he was working as a bouncer inside. That was the first time he had met Abdullah who was working inside security. R. 176, ll. 1 – R. 177, ll. 24; R. 180, ll. 1 – 25. There was an altercation so they closed the club. Scott was taking a person outside when he saw Lane and stopped to talk with him. R. 183, ll. 1. Scott saw the shooter whom he identified as Abdullah. Scott identified the gun Abdullah had as a Hi-point handgun. Scott testified that he shooter was firing into the crowd. R. 188, ll. 21 – R. 189, ll. 24; R. 193, ll. 1 – 24. Scott saw the bullet hit the car and ricochet hitting David Way in the back of his head. R. 198, ll. 1 – 23. Scott also testified that there were other people shooting that night. Scott admitted that it was possible that someone else could have shot towards the club. R. 199, ll. 1-16.

When asked during his testimony if Scott saw the man he identified as the shooter in the court room, Scott looked at Abdullah and said; "I guess that's him right there." Scott said that Abdullah looked "real familiar." R. 190, ll. 14 – R. 191, ll. 8.

Investigator Raymond Mackessy testified that he pulled the gun from the ceiling of the club's bathroom. The gun was a Hi-point .45 caliber semiautomatic pistol. The gun had six live cartridges in it. R. 261, l. 6 – R. 263, ll. 9. He also recovered fired .45 caliber cartridge casings from the ground around the club. R. 248, ll. 1 – 25.

Gunshot residue (GSR) kits were done on Abdullah. No gunshot residue was found on him. R. 345, ll. 7 – 22. The latent print analyst, Dianne Bodie, tested the gun, cartridges, and magazine of the gun for fingerprints. No prints were found on the gun nor cartridges. However, she did recover prints from the magazine. R. 370, ll. 7 – 23; R. 372, ll. 16 – R. 375, ll. 15.

Dr. Janice Lage was the pathologist who performed the autopsy on the deceased, David Way. She testified that the bullet that entered the back of his head and exited the front was not recovered. Therefore, she could not provide any information about the weapons nor ammunition that caused the injury to the deceased. R. 402, ll. 1 – R. 403, ll. 16; R. 407, ll. 14 – R. 409, ll. 22.

At the close of the state's case, Appellant Abdullah made a motion for not guilty on the charge of the indictment. The judge took that as a motion for a directed verdict. The judge reviewed the evidence presented by the state and denied Abdullah's directed verdict motion.

Appellant Abdullah responded in argument to that denial that Thurston Lane never said that Abdullah shot anyone. Lane also testified that Abdullah had a nine millimeter gun and Coral Scott said that Abdullah had a Hi-point .40 caliber gun. He argued that this was contradictory evidence. The judge told Abdullah that he could argue these issues in his closing argument. R. 411, ll. 10 -12; R. 412, ll. 19 – R. 414, ll. 25; R. 415, ll. 1 – 17.

The defense did not put up any evidence. R. 422, ll. 10 – 17. In his closing argument to the jury, Appellant Abdullah argued that McBride expected the jury to believe that Abdullah just shot him for no apparent reason as if Abdullah was “crazy or insane.” Abdullah said he was representing himself so he could not be crazy or insane. Abdullah argued that one witness said the gun was a nine millimeter and another said it was a .40 caliber Hi-point. The gun the state has was a .45 Magnum. Corey Scott could not positively identify Abdullah in court as the shooter. R. 443, l. 1 – R. 446, ll. 25.

Then Abdullah argued that the state could not prove that Abdullah’s gun discharged the bullet that killed David Way because they could not find the bullet. The state did not have the bullet that injured McBride because the bullet remained in him. Therefore, the state had no ballistics. R. 447, ll. 7 – R. 450, ll. 25. Abdullah argued that there was no GSR on him nor his hands. R. 451, ll. 1 – R. 452, ll. 10.

The jury returned verdicts of guilty on the three charges as indicted. R. 485, ll. 5 – R. 486, ll. 15. The judge sentenced Abdullah to life in prison on the murder, twenty years on the ABWIK, and five years on the gun charge. R. 493, ll. 17 – R. 494, ll. 3.

Discussion

When ruling on a motion for a directed verdict in a criminal trial, a trial court is concerned with the existence of evidence, not its weight. State v. Smith, Op. No. 2015-001905, ___S.E.2d___ 2018 WL 3863250 (2018); State v. Mitchell, 3411 S.C. 406, 409, 535 S.E.2d 126, 127 (2000). An appellate court must affirm a trial court’s decision to submit the case to the jury when the state has presented any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused. *Supra*.

A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. State v. McHoney, 344 S.C. 85, 97 544 S.E.2d 30, 36 (2001).

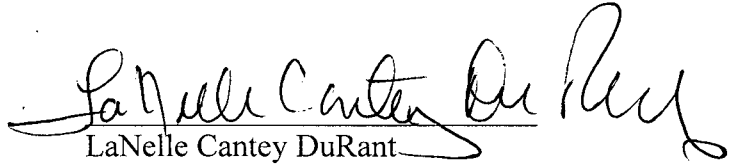
On appeal from the denial of a directed verdict, this court must view the evidence in the light most favorable to the state. State v. Burdette, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999).

The trial judge should not refuse to grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty; "suspicion" implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. State v. Pearson, 415 S.C. 463, 783 S.E.2d 802 (2016).

The trial court erred in denying Appellant's motion for a directed verdict. The state did not present sufficient evidence that Appellant's gun was the one that killed David Way and wounded Marell McBride. The bullets were never recovered. Other people were shooting guns in the parking lot of the Lion's Pit at the time that way and McBride were shot. No evidence was presented that law enforcement investigated to see what type guns were being shot by other people. If the bullet that killed Way ricocheted, then it was possible that one of the bullets shot by one of the other shooters was the one that ricocheted. There was no GSR found on Appellant Abdullah. The only evidence were the witnesses who claim to have seen Abdullah shooting when it was a time of chaos.

CONCLUSION

Based on the above, Appellant's convictions and sentences should be reversed, and his case remanded for the entry of a directed verdict on all charges.

A handwritten signature in black ink, appearing to read "LaNelle Cantey DuRant", written over a horizontal line.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of October, 2018.

STATE OF SOUTH CAROLINA

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Honorable D. Craig Brown, Circuit Court Judge

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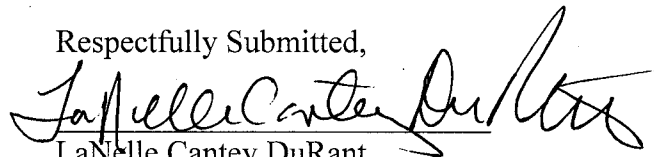
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Muttaqin Fatir Abdullah 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 D. Craig Brown, which was held on October 17 - 21, 2016, 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 Muttaqin Fatir Abdullah.

Respectfully Submitted,



LaNelle Cantey DuRant

Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of October, 2018.

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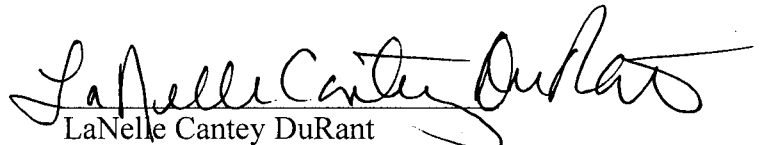
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s):
- (2) Sentencing sheets
- (3) October 17-21, 2016 Trial Transcript

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

October 05, 2018


LaNelle Cantey DuRant
Appellate Defender

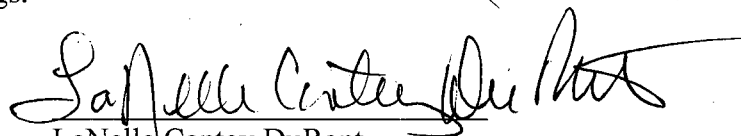
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CERTIFICATE OF COUNSEL

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."

October 05, 2018.



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