STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

ORIGINAL

THE STATE,

RESPONDENT,

RECEIVED
NOV 13 2018
SC Court of Appeals

V.

CHRISTIAN ARENSON SCOWCROFT,

APPELLANT

APPELLATE CASE NO 2017-001859

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to direct a verdict of acquittal when the State failed to present substantial circumstantial evidence which reasonably tended to prove or evidence from which it could be fairly and logically deduced that Appellant committed a burglary first degree and grand larceny?

STATEMENT OF THE CASE

In February of 2017, the Greenville County Grand Jury indicted Appellant, Christian Arenson Scowcroft, for burglary first degree and grand larceny, indictment #2017-GS-23-1278. On August 23, 2017, Appellant proceeded to jury trial before the Honorable Perry H. Gravely. Randall L. Chambers represented Appellant at trial. Brann Fowler prosecuted the case. The jury found Appellant guilty and Judge Gravely sentenced Appellant to fifteen (15) years for burglary first degree and one year concurrent for grand larceny. A timely notice of intent to appeal was served on September 5, 2017. This appeal follows.

STANDARD OF REVIEW

"A case should be submitted to the jury when the evidence is circumstantial 'if there is any substantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced.'" State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011) (quoting State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)). "Evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt." Id. "Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error." Id. at 139, 708 S.E.2d at 776-777. "On appeal of the denial of a directed verdict of acquittal, this Court must look at the evidence in the light most favorable to the state." Id. at 139, 708 S.E.2d at 777; see also State v. Hepburn, 406 S.C. 416, 429 753 S.E.2d 402, 409 (2013). If the state failed to present any direct evidence or any substantial circumstantial evidence reasonably tending to prove guilt of the accused, the appellate court must reverse the lower court's denial of the directed verdict motion. Hepburn, 406 S.C. at 416, 429 S.E.2d at 409.

ARGUMENT

The trial judge erred in refusing to direct a verdict of acquittal when the State failed to present substantial circumstantial evidence which reasonably tended to prove or evidence from which it could be fairly and logically deduced that Appellant committed a burglary first degree and grand larceny.

On August 16, 2016, at 11:15 AM Harrison Golson came home from work for lunch to discover that someone had broken into his house through the backdoor and stolen two guns with accessories, video games and a PlayStation. (R. p. 33, lines 6-25). One of the guns was a Remington Model 700, .270 caliber rifle. (R. p. 37, lines 8-10). The other gun was a Browning .12 gauge shotgun. (R. p. 39, lines 20-22). A neighbor, Michael Nascarello, testified that on the morning of the burglary he saw an unfamiliar red Pontiac Sunfire parked in front of his house. (R. p. 45, line 19 – p. 46, lines 1-10). Later, when police showed Nascarello a photo of Appellant's red Volkswagen, he claimed that was the car he saw. (R. p. 55, lines 9-24). Nascarello also testified that he saw a lanky white guy with shaggy hair get into the red car. (R. p. 49, line 14 – p. 50, lines 1-24; p. 114, line 20 – p. 115, line 1). Appellant had close cropped hair. (R. p. 115, lines 2-4).

Appellant testified that on August 16, 2016, between noon and 1:00 PM, he returned home from his Dad's lake house at Lake Keowee where he spent the night with his girlfriend and her friend. (R. p. 170, line 1 – p. 171, lines 1-6). The night before he rode with his girlfriend to Greenville to pick up a friend of hers who had too much to drink. (R. p. 169, line 13 – p. 170, lines 1-2). Appellant left his house unlocked with his phone and keys on the table. (R. p. 170, lines 2-4). The three then drove, in the girlfriend's car, to the lake where they spent the night. They did not drive Appellant's red Volkswagen Jetta to the lake. (R. p. 170, lines 12-23).

Earlier, Appellant had asked his roommate, Britain Donahue, to move out and when Appellant and his girlfriend returned, they started packing Donahue's belongings. (R. p. 174, line 10 – p. 175, 176, lines 1-20). Appellant's girlfriend planned to move in and needed space. (R. p. 171, line 9 – p. 172, lines 1-10). While they were packing Donahue's things they found two guns and some electronics. (R. p. 176, lines 11-20). At trial Donahue agreed that in August of 2016, he had thick longer hair that could be shaggy. (R. p. 133, lines 1-15).

Donahue had not paid his share of the rent and told Appellant he did not care if they sold the guns and electronics. (R. p. 178, line 13 – p. 179, lines 1-2). Appellant testified that he sold a PlayStation to a GameStop store and the rifle to Traders Gun Shop. (R. p. 179, line 22 – p. 180, 181, lines 1-10). Appellant provided his identification when he sold both the rifle and the PlayStation. (R. p. 90, line 3 – p. 91, lines 1-4; p. 60, line 1 – p. 61, lines 1-24). An employee of Traders Gun Shop, George Nannarello, testified that a few days later Appellant returned and tried to sell them a shotgun. (R. p. 65, line 5 – p. 66, lines 1-5). Nannarello testified that he did not buy the shotgun because the rifle Appellant sold the store earlier had been reported as stolen. (R. p. 67, line 20 – p. 68, line 1). According to Nannarello, Appellant told him that both guns had been in his safe for years. (R. p. 68, lines 4-5). Appellant testified that he did not try to sell the shotgun at Traders Gun Shop. (R. p. 183, lines 12-25). Appellant testified that he sold the shotgun at a gun and knife show on August 18, 2016. (R. p. 182, line 1 – p. 183, lines 1-11).

Based on the information Appellant provided when he sold the rifle and PlayStation, Investigator Robert Grubbs with the Greenville County Sheriff's Department asked Appellant to come in for an interview. (R. p. 110, lines 1-13). Appellant called the Investigator and voluntarily came in for an interview on August 26, 2016. (R. p. 100, lines 8-18). A recording of the interview was introduced as State's Exhibit #20 and played for the jury without objection.

(R. p. 101, lines 11-19). The investigator had obtained an arrest warrant for Appellant prior to the interview. (R. p. 111, lines 20-23). Although Appellant told the investigator that he believed the guns and PlayStation belonged to his former roommate, Donahue, Appellant was arrested. (R. p. 104, line 13 – p. 105, 106, lines 1-23). The investigator was unable to contact Donahue. (R. p. 107, line 25 – p. 108, lines 1-18).

The police seized Appellant's phone when they arrested him. (R. p. 118, lines 16-23). Officer Dan Kelly with the Greenville County Sheriff's Department was qualified as an expert in using the GeoTime computer program to interpret cell phone data. (R. p. 151, lines 13 – p. 152, lines 1-13). According to Officer Kelly, when Appellant's cell phone was used between August 11, 2016 and August 16, 2016, the phone was not near Lake Keowee. (R. p. 153, line 11 – p. 154, 155, lines 1-2). The officer admitted he had no way of knowing who had possession of the phone during this time frame. (R. p. 155, lines 10-15).

Following Appellant's arrest, officers executed a search warrant of Appellant's home and seized a computer. (R. p. 139, lines 2-11). Deputy Michael Bryan with the Greenville County Sheriff's Department analyzed the hard drive of the computer. Deputy Bryan testified that on August 16, 2016, at 1:13 AM someone looked at Harrison Golson's Facebook page. (R. p. 144, lines 1-14). Additionally, the deputy testified that a Gmail account bearing Appellant's name received a message titled "Wells Fargo Transfer Cancelled due to Insufficient Funds." (R. p. 143, lines 16-22). According to the deputy, the message was viewed on August 16, 2016, at 9:23 AM. The deputy also testified that there were several searches for gun stores done on the afternoon of August 16, 2016. (R. p. 145, lines 1-8).

Appellant and Harrison Golson used to work together at AT&T. (R. p. 29, line 24 – p. 30, lines 1-6). On one occasion Appellant went to Golson's house to help him move a piece of

furniture. (R. p. 30, line 7 – p. 31, lines 1-16). Appellant testified that his roommate frequently used his car and on the day he helped Golson move the furniture, his roommate, Donahue, drove him to Golson's house and waited in the car while Appellant helped. (R. p. 230, line 22 – p. 231, 232, 233, lines 1-8; p. 234, line 20 – p. 235, 236, lines 1-13). At trial Golson testified that his dog was locked up when Appellant helped him move the furniture. Golson also testified that he kept the same schedule every day. (R. p. 31, line 17 – p. 32, lines 1-14).

At the close of the State's case Appellant moved for a directed verdict. (R. p. 156, line 19 – p. 157, lines 1-7). Appellant argued:

> Your Honor, I would just say that there is no physical evidence of any kind and I would say that there is no evidence of any other kind that rises to any remote standard that the solicitor has to meet at this point considering all of the evidence in the light most favorable to the Solicitor. Certainly on the burglary, that he entered that home unlawfully or otherwise on the day this crime was supposed to have been committed. Likewise, as to the grand larceny, I think at best they could prove receiving stolen goods and, so, based on that we ask for a directed verdict.

(R. p. 156, line 19 – p. 157, lines 1-7). The State argued that the testimony identifying Appellant's car as being near the house when it was burglarized, the evidence of Appellant selling stolen property shortly after the burglary and the inconsistent stories given by Appellant as to how he acquired the property was sufficient to survive the directed verdict motion. (R. p. 157, lines 9-22). The judge denied the directed verdict motion stating, "In looking at State v. Rogers, it clearly states that if there is any direct evidence or of there is substantial circumstantial evidence that reasonably tends to prove the defendant's guilt that it is then a jury question. I think there is a host of circumstantial evidence that meets that standard, so I think it is a question for the jury and I deny your Motion." (R. p. 157, line 23 – p. 158, lines 1-7).

Appellant renewed the directed verdict motion at the close of the defense case (R. p. 267, lines 3-7) and moved for a new trial when the jury returned the verdicts. (R. p. 327, lines 19-20). Both motions were denied. The trial judge erred in refusing to direct a verdict of acquittal when the State failed to present substantial circumstantial evidence which reasonably tended to prove or evidence from which it could be fairly and logically deduced that Appellant committed a burglary first degree and grand larceny.

The State's case was based entirely on circumstantial evidence. "A case should be submitted to the jury when the evidence is circumstantial 'if there is any substantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced.'" State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011) (quoting State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)). At trial Investigator Grubbs admitted that there was no forensic evidence placing Appellant inside Golson's home and no eyewitness places Appellant in the red car seen by the neighbor. (R. p. 115, lines 11-21). The State presented the following circumstantial evidence at trial: 1.) Appellant sold stolen property shortly after the burglary; 2.) the neighbor saw a red car in the neighborhood on the day of the burglary and Appellant owned a red car; 3.) Appellant knew Golson, knew where he lived, knew his schedule and knew that he kept his dog locked up when he was away; 4.) inconsistent statements about the origin of the guns; 5.) Golson's Facebook page was viewed on the computer at Appellant's house in the early morning before the burglary; 6.) an e-mail about insufficient bank funds; and 7.) cell phone records indicating Appellant's cell phone remained behind in the Old Spartanburg Road area and not at Lake Keowee. This evidence, at best, merely raises a suspicion that Appellant received stolen property. The evidence was not sufficient to submit the burglary first degree and grand larceny charges to the jury.

The present case is easily distinguished from State v. Rogers, 405 S.C. 554, 568, 748 S.E.2d 265, 273 (Ct. App. 2013), the case cited by the trial judge when he denied the motion for directed verdict. In Rogers the State presented fifteen separate pieces of substantial circumstantial evidence placing the defendant at the scene of the crime and committing the murder. In the present case, the seven pieces of circumstantial evidence relied upon by the State, considered collectively, as a whole, fail to place Appellant inside the house committing a burglary and larceny.

In State v. Bennett, 415 S.C. 232, 235–36, 781 S.E.2d 352, 353–54 (2016), the South Carolina Supreme Court wrote: "On appeal from the denial of a directed verdict, this Court views the evidence and all reasonable inferences in the light most favorable to the State." State v. Butler, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014)." In State v. Pearson, 415 S.C. 463, 469–70, 783 S.E.2d 802, 805–06 (2016), the South Carolina Supreme Court wrote:

> "[W]hen the State fails to produce substantial circumstantial evidence that the defendant committed a particular crime, the defendant is entitled to a directed verdict." State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011); see Hepburn, 406 S.C. at 429, 753 S.E.2d at 408 ("In cases where the State has failed to present evidence of the offense charged, a criminal defendant is entitled to a directed verdict."). Further, when the State relies exclusively on circumstantial evidence and a motion for a directed verdict is made, the trial judge is concerned with the existence or non-existence of evidence, not with its weight. Cherry, 361 S.C. at 594, 606 S.E.2d at 478. The trial judge "should not refuse to grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty." Id. " 'Suspicion' implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." Id. "However, a trial judge is not required to find that the evidence infers guilt to the exclusion of *any other reasonable hypothesis.*" State v. Ballenger, 322 S.C. 196, 199, 470 S.E.2d 851, 853 (1996) (emphasis added).

Viewing the evidence in the light most favorable to the State, the State failed to present evidence that Appellant committed a burglary first degree and grand larceny. The evidence merely raises a suspicion. The facts and circumstances presented by the State do not amount to

proof of the crime charged. The present case is distinguished from Bennett and Pearson. In Bennett the defendant's fingerprint was found at the scene of the burglary. In Pearson the defendant's fingerprint was found on a car that fled the crime scene. In both cases there were alternative explanations, inconsistent with guilt, as to why the fingerprints were found at the scene of the crime. In both cases the Court found that the trial judge correctly denied the motion for directed verdict because the trial judge was not required to find that the evidence presented by the State inferred guilt to the exclusion of any other reasonable, alternative hypothesis.

In contrast, in the present case, Appellant's fingerprint was not found at the scene of the burglary. The State presented no evidence to establish Appellant was inside the home committing a burglary and grand larceny. The testimony that a red car was seen near the house at the time of the burglary combined with the fact that Appellant owned a red car was not sufficient to place Appellant inside the home. None of the other circumstantial evidence presented by the State places Appellant inside the home committing a burglary and grand larceny. As stated above, the circumstantial evidence, at best, merely raises a suspicion that Appellant received stolen property.

In State v. Frazier, 386 S.C. 526, 532, 689 S.E.2d 610, 613 (2010), the South Carolina Supreme Court wrote:

> Frazier cites to State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004), State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000), and State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984) for the proposition that the trial court must grant a directed verdict if the State fails to present evidence placing the defendant at the scene of the crime. In our view, Frazier overstates the holdings in these cases. In Arnold, Martin, and Schrock we held that the State did not produce substantial circumstantial evidence of the defendant's guilt and noted that the State presented *no* evidence that the defendant was at the scene. We reject any interpretation that these cases altered or increased the sufficiency of evidence standard a trial court is to apply in a case based on circumstantial evidence. In this case, unlike Arnold, Martin, and Schrock, the State offered substantial circumstantial evidence of Frazier's guilt.

The circumstantial evidence presented by the State in Frazier included, among other things, the fact that two witness observed Frazier lurking around the murder scene prior to the murder and both identified Frazier in a photo line-up. As in Arnold, Martin, and Schrock, in the present case the State did not produce substantial circumstantial evidence of Appellant's guilt and the State presented no evidence that Appellant was at the scene. No witness observed Appellant near the home that was burglarized. The evidence in the present case, unlike the evidence in Frazier, was insufficient to submit the case to the jury.

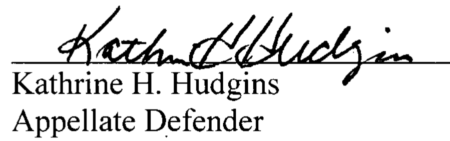
The State presented less circumstantial evidence in Appellant's case than the evidence found insufficient in State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011); State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001) and State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011). As the Court wrote in Odems:

> The circumstantial evidence presented in Petitioner's case is analogous to that found in Bostick and Lollis. The State's case against Petitioner relied primarily on three pieces of circumstantial evidence: (1) the fact that less than ninety minutes after the burglary, police located Petitioner in the getaway car with the burglars and the stolen goods; (2) Petitioner fled from law enforcement; and (3) Petitioner asked an uninvolved person to lie for him. State v. Odems, 385 S.C. 399, 404–05, 684 S.E.2d 573, 575 (Ct.App.2009). Even when viewed in the light most favorable to the State, the circumstantial evidence presented does not reasonably tend to prove Petitioner's guilt.

395 S.C. at 588, 720 S.E.2d at 51. As in Odems, the circumstantial evidence presented does not reasonably tend to prove Appellant's guilt of burglary and grand larceny.

CONCLUSION

Based on the above argument, this Court should reverse Appellant's convictions.



Kathrine H. Hudgins
Appellate Defender

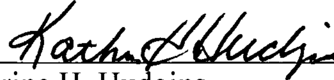
ATTORNEY FOR APPELLANT

This 13th day of November, 2018.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability this Final 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."

November 13th, 2018



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