

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Lexington County

Honorable R. Knox McMahon, Circuit Court Judge

RECEIVED

JUL 25 2018

THE STATE,

SC Court of Appeals

RESPONDENT,

V.

HEATHER MARIE LAWSON,

APPELLANT

APPELLATE CASE NO 2017-001715

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

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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

STANDARD OF REVIEW3

ARGUMENT

The trial court erred in denying trial counsel’s motion for a directed verdict because the State failed to prove sufficient circumstantial evidence beyond a reasonable doubt that appellant committed the crime of homicide by child abuse.4

CONCLUSION.....7

PETITION TO BE RELIEVED AS COUNSEL8

TABLE OF AUTHORITIES

Cases

| | |
|---|---|
| <u>Evans-Smith v. Taylor</u> , 19 F.3d 899, 906 (4 th Cir 1994)..... | 5 |
| <u>Jackson v. Virginia</u> , 443 U.S. 307, 99 S.Ct. 2781 (1979)..... | 4 |
| <u>State v. Bostick</u> , 392 S.C. 134, 708 S.E.2d 774 (2011)..... | 3 |
| <u>State v. Brown</u> , 267 S.C. 311, 227 S.E.2d 674, 677 (1976)..... | 5 |
| <u>State v. Edwards</u> , 298 S.C. 272, 379 S.E.2d 888 (1989)..... | 5 |
| <u>State v. Hepburn</u> , 406 S.C. 416, 753 S.E.2d 402 (2013)..... | 3 |
| <u>State v. Littlejohn</u> , 228 S.C. 324, 89 S.E.2d 924 (1955)..... | 5 |
| <u>State v. Logan</u> , 405 S.C. 83, 747 S.E.2d 444 (2013)..... | 5 |
| <u>State v. Matarazzo</u> , 262 S.C. 662, 207 S.E.2d 93, cert. denied, 420 U.S. 945 (1974)..... | 5 |
| <u>State v. Mitchell</u> , 341 S.C. 406, 535 S.E.2d 126 (2000)..... | 3 |
| <u>State v. Totherow</u> , 263 S.C. 275, 210 S.E.2d 228, 230 (1974)..... | 5 |
| <u>State v. Turner</u> , 117 S.C. 470, 109 S.E. 119, 120 (1921)..... | 5 |
| <u>States v. Varoz</u> , 740 F.2d 772, 775 (10 th Cir. 1984)..... | 5 |
| <u>United States v. Ortiz</u> , 445 F.2d 1100, 1103 (10 th Cir 1971)..... | 5 |

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in denying trial counsel's motion for a directed verdict when the State failed to prove sufficient circumstantial evidence beyond a reasonable doubt that appellant committed the crime of homicide by child abuse?

STATEMENT OF THE CASE

Appellant was convicted of homicide by child abuse after a jury trial held before the Honorable R. Knox McMahon on August 7-10, 2017, in Lexington County. She was sentenced to life imprisonment without parole. Robert Theo Williams, Esq. was trial counsel. Suzanne Mayes, Esq. and Robbie McNair, Esq. were the solicitors.

This appeal follows.

STANDARD OF REVIEW

Directed Verdict

“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 court erred in denying trial counsel's motion for a directed verdict because the State failed to prove sufficient circumstantial evidence beyond a reasonable doubt that appellant committed the crime of homicide by child abuse.

The assistant solicitor explained the State's theory of this case during his opening argument. He said appellant bludgeoned her 7-month-old baby to death with her own hands. The only people present were appellant, her one-year-old daughter and her three-year-old son. (R. p. 148, lines 5-16). A forensic pediatrician said the siblings could not have caused such injuries. (R. p. 150, lines 14-21). A forensic pathologist Dr. Ross performed the autopsy and determined the cause of death to be a homicide by blunt force trauma to the head. (R. p. 151, line 24-p. 152, line 2).

The assistant solicitor during his argument equated reasonable doubt with just being firmly convinced of the defendant's guilt. (R. p. 154, line 25-p. 155, line 11).

At trial, Dr. Ross testified for the State. On cross-examination, she could not rule out suffocation as a cause of death. (R. p. 501, line 8-p. 503, line 14). At the conclusion of the State's case, trial counsel moved for a directed verdict because the State's evidence was insufficient to prove appellant's guilt. (R. P. 647, line 19-p. 648, line 8). The trial court denied the motion. (R. p. 649, lines 1-9). 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).

In addition, this case was based on circumstantial evidence. There were no witnesses to the alleged crime. In State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013) the Court wrote:

To the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a

reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed.

405 S.C. at 99, 747 S.E.2d at 452.

CONCLUSION

Because suffocation could have been the cause of death, a directed verdict should be granted in appellant's favor.

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 25th day of July, 2018.

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HEATHER MARIE LAWSON,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Heather Marie Lawson 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 R. Knox McMahon, which was held on August 7 - 10, 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 Heather Marie Lawson.

Respectfully Submitted,



Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

This 25th day of July, 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) Transcript of Trial dated August 7-10, 2017.

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

July 25, 2018



Robert M. Pachak
Appellate Defender

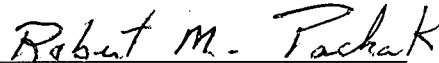
South Carolina Commission on Indigent
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ATTORNEY FOR APPELLANT

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."

July 25, 2018.



Robert M. Pachak
Appellate Defender

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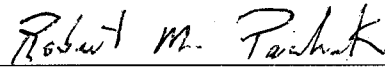
V.

HEATHER MARIE LAWSON,

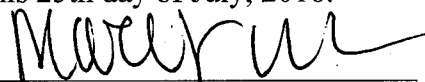
APPELLANT

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 J. Benjamin Aplin, 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 Heather Marie Lawson, 373466, at Camille Griffin Graham Correctional Center, 4450 Broad River Road, Columbia, SC 29210, this 25th day of July, 2018.


Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

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



Notary Public for South Carolina
My Commission Expires: May 12, 2027.