

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Greenville County

RECEIVED

Honorable Roger L. Couch, Circuit Court Judge

JAN 07 2019

THE STATE,

SC Court of Appeals
RESPONDENT,

V.

JOSEPH CHAPPELL,

APPELLANT

APPELLATE CASE NO 2018-000716

ANDERS BRIEF OF APPELLANT

TAYLOR D GILLIAM
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in failing to direct a verdict in Appellant's favor on the charge of carjacking where the state presented no direct or substantial circumstantial evidence that Appellant committed the offense?

STATEMENT OF THE CASE

Appellant was indicted for carjacking by a Greenville County jury. R. 175. He proceeded to trial on April 11, 2018 before the Honorable Roger L. Couch and a jury. R. 1. Brann Fowler served as the assistant solicitor, and Rodney Richey represented Appellant. The jury found Appellant guilty, and Judge Couch sentenced him to fifteen years' incarceration. R. 164, ll. 11 – 14; R. 173, ll. 4 – 8.

This brief 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 court erred in failing to direct a verdict in Appellant’s favor on the charge of carjacking where the state presented no direct or substantial circumstantial evidence that Appellant committed the offense.

Relevant facts

Five witnesses testified during the duration of Appellant’s trial. Although each was called by the State, only one, Coneze Barner, was able to provide testimony relevant to the charge of carjacking. According to Barner, he gave Appellant a ride on March 5, 2017. R. 59, ll. 3 – 11. Appellant asked Barner for a ride, and Barner acquiesced. R. 60, ll. 4 – 14. As the duo approached their destination—Appellant’s aunt’s house—Appellant indicated that nobody was home. R. 60, ll. 15 – 22. Appellant then requested a ride to a store on Staunton Bridge Road. Id.

According to Barner, he drove to the side of the store and Appellant “looked at [him] and he said, you going to give me this car.” App. 63 ll. 1 – 24. Barner testified that Appellant hit him in the head. R. 63 ll. 1 – 24. Barner got out of the car, and Appellant supposedly drove away. R. 64, l. 17 – R. 65, l. 7.

A police officer happened to drive by, and Barner provided his version of what occurred. R. 67 l. 23 – R. 68 l. 20. As Barner was explaining what had allegedly happened, Appellant purportedly drove by. Id. The officer, Tim Fuller, left to follow the car. Id.

Right after Fuller began following the car, he lost it. R. 92, ll. 10 – 16. Soon thereafter, according to Fuller, law enforcement received a call suggesting that a car matching the description of Barner’s aunt’s car was abandoned in a yard nearby. R. 93, ll. 12 – 24. Fuller

located the car. Id. Appellant was found nearby, approximately half a mile away. R. 94, l. 19 – R. 95, l. 17.

At the conclusion of the State's case-in-chief, counsel for Appellant moved for a directed verdict. R. 113, ll. 5 – 8. Judge Couch denied the motion. R. 113, ll. 9 – 16.

Discussion

The State's case against Appellant for the carjacking charge was largely circumstantial. "A person is guilty of the felony of carjacking who takes, or attempts to take, a motor vehicle from another person by force and violence or by intimidation while the person is operating the vehicle or while the person is in the vehicle." S.C. Code Ann. § 16-3-1075(B).

During Appellant's trial, a total of five witnesses testified for the prosecution. Only one of those witnesses offered evidence that Appellant took or attempted to take a car from Barner by force and violence. Therefore, at least one element of carjacking was not proven beyond a reasonable doubt, and the Court should have directed a verdict in Appellant's favor.

When ruling on a motion for a directed verdict, the trial court is concerned with the existence or non-existence of evidence, not its weight. State v. Williams, 303 S.C. 274, 400 S.E.2d 131 (1991); State v. Green, 327 S.C. 581, 491 S.E.2d 263 (Ct.App.1997). On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State. State v. Rowell, 326 S.C. 313, 487 S.E.2d 185 (1997) State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984). 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. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998); State v. Huggins, 325 S.C. 103, 481 S.E.2d 114 (1997).

When a case is built wholly on circumstantial evidence, if the State fails to produce substantial circumstantial evidence the defendant committed a particular crime, he is entitled to a directed verdict. State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011). “The trial court should grant a directed verdict motion when the evidence presented merely raises a suspicion of guilt.” State v. Bostick, 392 S.C. 134, 142, 708 S.E.2d 774, 779 (2011). The State has the burden of proving “the accused was at the scene of the crime when it happened and that he committed the criminal act”. State v. Schrock, 283 S.C. 129, 133, 322 S.E.2d 450, 452 (1984). “The [trial] court should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty.” State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000).

As argued by counsel during closing arguments, the State failed to prove all of the elements of carjacking using substantial circumstantial evidence beyond a reasonable doubt:

So what we do is we look to say what was the evidence? What was the evidence? The only evidence we had was Mr. Barner got up there and said it. That's it. What kind of corroboration was it? Tell me - - tell me one piece of evidence that corroborated his testimony. One. One piece of evidence.

We got no medical reports. So we - - so that don't corroborate the injury. Okay? We don't have any of that. We don't have any eyewitness to say it happened. We don't have the lady who came by and saw us laying in the road and helped us out. We don't have her.

So what piece of evidence can you put your hands on and say, this corroborates what he said? Zero. Nothing. Nothing. So how can we - - reasonable doubt? Reasonable doubt? Reasonable doubt is a fancy term that it says - - it makes you hesitate to act or doesn't leave you firm in your conviction.

R. 142, l. 23 – R. 143, l. 14.

The evidence offered by the State was insufficient to send the case to a jury in Appellant's case. A verdict should have been granted in his favor at the close of the State's case-in-chief.

CONCLUSION

Appellant respectfully requests this Court reverse his conviction based upon the trial court's error in failing to direct a verdict in his favor.



Taylor D Gilliam
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of January, 2019.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Roger L. Couch, Circuit Court Judge

THE STATE,

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V.

JOSEPH CHAPPELL,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Joseph Chappell 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 Roger L. Couch, which was held on April 11, 2018, 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 Joseph Chappell.

Respectfully Submitted,



Taylor D Gilliam

Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of January, 2019.

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Honorable Roger L. Couch, Circuit Court Judge

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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;
- (2) Entire trial transcript;
- (3) State's Exhibit #1: CD of Phone Recording.

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

January 07, 2019



Taylor D Gilliam
Appellate Defender

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SC Court of Appeals

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."

January 07, 2019.



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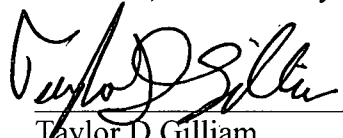
v.

JOSEPH CHAPPELL,

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 Joseph Chappell, 179150, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 7th day of January, 2019.



Taylor D Gilliam
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 7th day of January, 2019.

Mary Allaire (L.S)

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