

 ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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OCT 04 2012

Appeal from Allendale County

**SC Court of Appeals**

William H. Seals, Jr., Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

MARQUIS BREELAND,

APPELLANT

Appellate Case No. 2011-197633

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FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court judge erred when he did not grant Breeland's motion for a directed verdict when the evidence adduced at trial did not amount to more than a mere suspicion that he was guilty of shooting the victim?

STATEMENT OF THE CASE

Marquis Sentel Breeland was indicted by the Allendale County grand jury of murder and possession of a weapon during the commission of a violent crime during its March 2010 term. He was tried before the Honorable H. William Seals, Jr. and a jury August 8- 10, 2011. He was represented by Stephen Plexico, Esquire. The state was represented by Tameaka A. Legette and Robert E. Ferguson, Jr., Esquires.

He was convicted and sentenced to life in prison.

This appeal timely follows.

## ARGUMENT

The trial court judge erred when he did not grant Breeland's motion for a directed verdict when the evidence adduced at trial did not amount to more than a mere suspicion that he was guilty of shooting the victim.

Breeland was convicted of events that occurred on July 22, 2007. On that day, the victim, Laurice Garvin, was shot and killed at Kennedy Park, in Allendale, South Carolina.

The victim's body was located 40 feet from his car that was located on Robin Street, adjacent to the park. R. 33, ll. 16-20. The crime scene investigator, without objection, opined that the victim was shot through the driver's side window. R. 46, ll. 5-8. According to the investigator, it appeared that the victim was able to get out of the vehicle, and then was shot at least three more times. R. 48, ll. 2-10. Police recovered four cartridge casings at the scene. R. 42, ll. 9-13.

Antonio Frazier, a friend of the victim's, testified that he was not aware of any animus between Breeland and the victim. R. 59, ll. 22-24.

Patricia Ann Bradley testified that she saw Breeland, Anthony Sanders, and Ricky Brandt at the corner of Kennedy Park, along with another short black male. She also conceded that there could have been other people standing around the corner, as well. She stated that the area was a "very public place." R. 63, l. 21- 64, l. 3. Around the time that the victim was killed, she did not observe anyone doing anything criminal or illegal. R. 64, l. 24- 65, l. 5.

Richard Priester testified that he observed three men running away from Kennedy Park after he heard the gunshots. He did not know who they were. R. 71, l. 19- 73, l. 6.

Willie James Elmore testified that back in July of 2007 (specific date not testified to), he heard Breeland say "he was going to kill that dude." R. 74, ll. 8-22. Elmore testified that he gave a statement to in 2007 to law enforcement that Breeland said he was wanted to kill the victim. He testified that he did not think that he meant to do it. R. 75, l. 17- 76, l. 14. He testified that Breeland pulled out "something" but he did not know what it was. R. 77, ll. 8-18; R. 78, ll. 1-21. After the victim was killed, Breeland told Elmore that he did not know who did it. R. 78, l. 23- 79, l. 9.

Dwann Devoe, who, along with a friend, was driving his car around Kennedy Park, testified that he saw Breeland and Anthony Sanders running towards him. They flagged him down and asked for a ride. At the time of this encounter, law enforcement had already arrived at the scene of the shooting. R. 81, ll. 19-25. Devoe was driving toward Kennedy Park because he had heard that somebody had been killed. R. 83, ll. 12-25.

The state tried to get him to testify that Breeland appeared "nervous."

Q. Yes, sir. But so were they acting like they were nervous?

A: At the time they were, but at the same time they were panicking too, because they was running at that same time, too.

Q: Yes, sir. So you said in your statement they were acting really nervous; right?

A: Yes, ma'am.

R. 90, ll 8-15.

Latrincy Carter corroborated Devoe's account that he and Devoe picked them up in the car and gave them a ride to a friend's house, located close to the park. R. 93, l. 6- 96, l. 19.

The centerpiece of the State's case against Breeland was the testimony of Marcus Witherspoon. At the time of trial, Witherspoon had pleaded guilty to a federal drug charge subjecting him to a possible life sentence. He testified that he was hoping to receive a lighter sentence for testifying for the State of South Carolina. He testified that on the night of July 22, 2000, he saw Breeland. He stated that Breeland came to Witherspoon's house and "basically just told me that he was the one that, you know, pulled the trigger." R. 99, l. 8-102, l. 24. Witherspoon could not really explain why Breeland would say this to him other than he thought maybe he wanted recognition. R. 103, ll. 1-13. Witherspoon signed a plea agreement with the US Attorney's Office to cooperate with the government. R. 104, l. 3-114, l. 3.

Other than this evidence, nothing tended to show that Breeland shot the victim. There were no eyewitnesses, and there was no further evidence connecting him to the crime. At the close of the State's case, trial counsel made a motion for a directed verdict based on the lack of evidence adduced at trial. The trial court judge denied the motion. R. 155, l. 20-157, l. 14.

The court judge erred when he did not grant the motion for directed verdict because the evidence presented did not rise above the level of mere suspicion that Breeland was guilty of this crime. Breeland did not present a defense. Trial counsel renewed his motion for a directed verdict. R. 161, ll. 7-19.

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); State v. Rothschild, 351 S.C. 238, 243, 569 S.E.2d 346, 348 (2002). A circuit judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty.

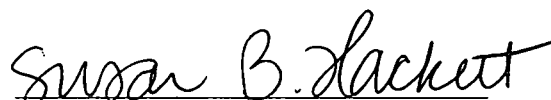
State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 451-52 (1984). Mere suspicion is insufficient to support a guilty verdict. See State v. Arnold, 361 S.C. 386, 389-90, 605 S.E.2d 529, 531 (2004).

Here, the state never introduced any evidence regarding a motive or a murder weapon that could be traced to Breeland. See State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011). The state did not present any eyewitnesses. The state could not show any connection between Breeland and the weapon. The state did not show any relationship between Breeland and the victim. Additionally, there was *absolutely* no evidence he ever possessed a gun. The state's case rested solely on the purported confession made to a person hoping to derive some reward for the testimony. The evidence did not rise above a mere suspicion that Breeland was guilty of murdering the victim. The trial court judge erred, and respectfully Breeland asks this Court to reverse his convictions.

CONCLUSION

For the preceding reason, Breeland respectfully asks this Court to reverse his convictions.

Respectfully submitted,

A handwritten signature in cursive script that reads "Susan B. Hackett". The signature is written in black ink and is positioned above the printed name.

Susan B. Hackett  
Appellate Defender

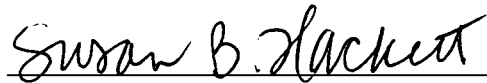
ATTORNEY FOR APPELLANT

This 4th day of October, 2012.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 4, 2012



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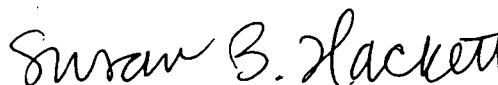
APPELLANT

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CERTIFICATE OF SERVICE

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The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Alphonso Simon, Jr., Esquire, at the Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 4th day of October, 2012.

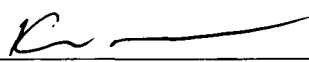


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Susan B. Hackett  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 4th day of October, 2012.

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: October 2, 2013.