STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Allendale County
The Honorable H. William Seals, Jr., Circuit Court Judge
Appeal No. 2011-197633

THE STATE

RESPONDENT,

V.

MARQUIS SENTEL BREELAND,

APPELLANT

FINAL BRIEF OF RESPONDENT

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APPELLANT'S 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?

RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in denying Appellant's motion for a directed verdict when the State presented substantial circumstantial evidence of Appellant's guilt?

STATEMENT OF THE CASE

On August 8-10, 2011, Appellant Marquis Sentel Breeland ("Breeland") was tried by a jury for the murder of Laurice Garvin and for possession of a weapon during the commission of a violent crime. Appellant was tried in the Allendale County Court of General Sessions before the Honorable H. William Seals, Jr., Circuit Court Judge. Stephen T. Plexico, Esquire of the Fourteenth Judicial Circuit's Public Defender's Office, represented Appellant. The State was represented by Tameaka A. Legette, Esquire and Robert E. Ferguson, Jr., Esquire, both Assistant Solicitors for the Fourteenth Judicial Circuit. On August 10, 2011, Breeland was convicted of murder and possession of a weapon during the commission of a violent crime. (R. p. 210). He was sentenced to confinement for life for the murder conviction, and five years confinement for the possession of a weapon during the commission of a violent crime, both to be served consecutively. (R. p. 217). Before this Court is Appellant's direct appeal of both convictions. He requests this Court reverse his convictions and order a new trial. The State respectfully requests this Court deny Appellant's appeal and affirm his convictions.

STATEMENT OF FACTS

On July 22, 2007, the victim Laurice Jerome Garvin was found shot to death in Allendale. The forensic pathologist testified that Garvin had three gunshot wounds, two to the head and one to the chest. (R. p. 145). The pathologist determined that the victim died as a result of a laceration to the brain due to the gunshot wounds to the head. (R. p. 153).

Daphne Conner, a local resident, testified that on July 22, 2007, she saw a body laying in the road at Kennedy Park in Allendale. (R. p. 15-6). She also noticed there was a car at the edge of the road. (R. p. 16). Conner called 911. (R. p. 17). She indicated that it took approximately five minutes from law enforcement and the ambulance to arrive. (R. p. 17).

Marlene Levette Love testified that she was visiting at her mother's house in Kennedy Park on July 22. She indicated that she heard sounds that were similar to firecrackers. (R. p. 19). Everyone in her mother's house got down because they thought someone was shooting a firearm outside. After two minutes, she peeped out the window and saw a car light shining on a body. (R. p. 19). She noted the car was just outside the road. (R. p. 19). Love noted that she did not see anyone else when she looked out. (R. p. 21).

When law enforcement and EMS arrived, the victim was laying in the street. (R. p. 23). There were several gunshot wounds, including one to the head and another to the collarbone area. (R. p. 23). The victim was not breathing, had no pulse, and had no electrical activity according to the EKG. (R. p. 23). The victim was classified as dead on arrival. (R. p. 24).

John Sullivan, who was then a sheriff's deputy who oversaw operations at the Allendale Police Department, testified that when he arrived, the victim was in the roadway, covered, and was 175 ft or so away from a car that was in a ditch. (R. pp. 26-27). Karl Kenley of SLED testified the victim's body was approximately 140 ft from the car. (R. pp. 35, 36, 39-40). He noted that the vehicle was still in the drive position when they arrived. (R. pp. 38, 39). Four cartridge casings were recovered from the scene. (R. p. 42). A fired projectile was discovered in the rear seat on the driver's side of the vehicle. (R. pp. 43-44). Kenley also testified that the victim was possibly driving while sitting in an inclined position. (R. pp. 45-46). He noted that the victim was shot while in that position because the dowel rods and the holes in the seat corresponded with the wounds found on the right side of the victim's chest. (R. p. 46). The person who shot him would have had to be standing outside the driver's side window. (R. p. 46).

Kenley was also able to determine that the shooting occurred at or near where the cartridge casings were recovered. (R. pp. 47-48). He noted that no blood was found in the car, which indicated the victim either did not start bleeding before he got out of the car or his clothing absorbed any bleeding that may have occurred while he was in the vehicle. (R. p. 48). Kenley noted the victim was shot at least three more times after he got out of the vehicle. (R. p. 48).

ARGUMENT

THE TRIAL COURT DID NOT ERR IN DENYING APPELLANT'S MOTION FOR A DIRECTED VERDICT; THE STATE PRESENTED SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE OF APPELLANT'S GUILT.

Standard of Review

"'Murder' is the killing of any person with malice aforethought, either express or implied." S.C. Code Ann. § 16-3-10 (2003). "'Malice' is the wrongful intent to injure another and indicates a wicked or depraved spirit intent on doing wrong." State v. Kelsey, 331 S.C. 50, 62, 502 S.E.2d 63, 69 (1998).

> If a person is in possession of a firearm or visibly displays what appears to be a firearm or visibly displays a knife during the commission of a violent crime and is convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60, he must be imprisoned five years, in addition to the punishment provided for the principal crime.

S.C. Code Ann. § 16-23-490 (2010). By statute, murder is a violent crime. S.C. Code Ann. § 16-1-60 (2010).

"A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged." State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). "If there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must find the case was properly submitted to the jury." Id. at 292–93, 25 S.E.2d at 648.

> 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. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000); see also State v. Williams, 321 S.C. 327, 332, 468 S.E.2d 626, 629 (1996). "The jury weighs the evidence but when there is an absence of evidence, it

> becomes the duty of the trial judge to direct a verdict...." State v. Schrock, 283 S.C. 129, 134, 322 S.E.2d 450, 452–53 (1984). Evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt. Id. at 133, 322 S.E.2d at 452 (citing State v. Manis, 214 S.C. 99, 51 S.E.2d 370 (1949)). "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." State v. Irvin, 270 S.C. 539, 543, 243 S.E.2d 195, 197 (1978) (citing State v. Massey, 267 S.C. 432, 229 S.E.2d 332 (1976)). 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. State v. Martin, 340 S.C. 597, 602, 533 S.E.2d 572, 574 (2000).

State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776-77 (2011). In ruling on a motion for a directed verdict, a trial judge is concerned only with the existence of evidence, not with its weight. State v. Nichols, 325 S.C. 111, 122, 481 S.E.2d 118, 124 (1997). "[A] trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis." State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004).

Argument at Trial

After the State rested its case, Breeland moved for a directed verdict. (R. p. 155). Specifically, Breeland argued as follows:

> Your Honor, after hearing all the evidence put forth by the State, I just don't see how the State has carried its burden, Your Honor.
>
> They have only placed my client in the area that Mr. Garvin was shot. They have not placed a gun in possession of my client.
>
> They have, their own witnesses have described people being in that area, on that corner, as normal. There're normally a number of people who are there on that corner. This is a normal activity at best. My client is – at worst my client is engaged in a normal activity of being in the area and being on that corner. There's no evidence that he shot at this individual.

There is the only thing they put forward was, is that he was -- that he was seen running some unestablished distance from the area, at least blocks, after the shooting, perhaps 10 to 15 minutes after the shooting which, of course, you could go much farther than blocks. And that he had prior, made a prior statement that he was going to shoot the individual.

While all of that creates a strong suspicion, Your Honor, I don't think that is enough in law to go forward to take it to a jury on murder.

They just don't have any evidence in this case. And all they can possibly do is speculate. And a suspicion, however strong, I think the case law is still good, I think it entitles the Defendant to a directed verdict on both the murder indictment and on the use of a weapon during the commission of a violent crimes. Those being indictments for murder 2009-GS-03-0056, and 2009-GS-032-0057, the latter being possession of a weapon during the commission of a violent crime.

We just don't think there's enough evidence to go to a jury, Your Honor. Thank you.

(R. pp. 155, l 22 – R. p. 157, l 5).

The trial court denied the motion.

We do have the Defendant in the area where a crime happened; we do have the Defendant running away from that direction shortly after the crime happened; we have a witness that says he was indeed the trigger man.

We have circumstantial evidence, I think, certainly enough to go to the jury.

(R. p. 157, ll 7-12).

Appellant renewed the motion after he rested his case. (R. p. 161). It was also denied by the trial court. (R. p. 161).

Relevant Facts and Argument

Appellant was not entitled to a directed verdict for the murder charge; the State presented substantial circumstantial evidence establishing Appellant murdered Laurice Garvin through Appellant's confession to Marcus

Witherspoon, and the presentation of testimony and evidence establishing Appellant's presence in the vicinity of the murder shortly before and shortly after it occurred, along with Appellant's statements indicating that he wanted to kill Mr. Garvin.

When viewed collectively and in looking at the evidence in the light most favorable to the State, it is clear the State presented substantial circumstantial evidence that Appellant committed the murder in this case. First, there was substantial evidence establishing that the victim was killed at the hands of another. The pathologist testified that the victim died as a result of a laceration to the brain due to gunshot wounds to the head. (R. p. 153).

There was testimony indicating Appellant was in the vicinity of the shooting around the time of the shooting. Ms. Bradley testified that she saw Appellant on the corner of the street where the shooting occurred on July 22. (R. pp. 60-61). She noted that Appellant was with Liberace. (R. p. 61). She further indicated that there was at least one other short black male on the corner with Appellant. (R. p. 64). During cross-examination, she indicated that she stated she saw Appellant, and Anthony Sanders, but she did not see Ricky Brandt that day. (R. pp. 63-64).

Mr. Priester, who on the day of the shooting was visiting a friend who lived on the street where the shooting occurred, testified that he saw three males running through a path some time shortly after the shooting occurred. (R. pp. 68-71, 72-73). Priester indicated that two of the males were taller than five feet, six inches tall, and the other was shorter. (R. pp. 68, 69-70).

Mr. Devoe testified that he was riding with Latrincy Carter through Kennedy Park shortly after the shooting. (R. pp. 81-82). Devoe noted that

Appellant and Anthony Sanders were running towards a stop sign. (R. p. 81). Appellant and Sanders requested a ride from Carter and Devoe. (R. p. 81). Devoe noted that Appellant and Sanders were running off the same street where the victim's body was located. (R. p. 84). Devoe testified that both Appellant and Sanders were running, and they were out of breath when they stopped Devoe and Carter. (R. p. 82). Devoe also indicated that in the statement he gave law enforcement in 2007, Devoe noted the Appellant and Sanders were acting nervous. (R. p. 90). Appellant and Sanders both requested and received a ride to a location that was a few streets away from the where the victim was killed. (R. p. 82).

Mr. Carter also testified that he and Devoe drove to see where the victim was shot on July 22. (R. p. 93). Carter saw Appellant and Sanders that evening. Carted indicated that Appellant and Sanders asked for a ride to the Morrells' house. (R. p. 93). Carter also stated that Appellant and Sanders informed them that they were not heading in the direction of where the victim was shot. (R. p. 93). Carter surmised that he and Devoe ran into Appellant and Sanders between ten and thirty minutes after the shooting, but he was not sure when the shooting occurred. (R. pp. 95-98).

There was also testimony that Appellant actually shot the victim. Appellant admitted to Marcus Witherspoon that he shot the victim. Witherspoon testified that he saw Appellant on July 22 after the shooting. (R. pp. 101-02). Witherspoon indicated that Appellant was with Freddie Washington and another

man that Witherspoon knew as Antron.[1] (R. p. 102). Appellant, Washington and Antron came to Witherspoon's back door, and they talked with Witherspoon on his back porch. (R. p. 109). Witherspoon testified that Appellant told him that he was the one who shot the victim. (R. pp. 102-03).

Finally, there was evidence that the shooting was done with malice aforethought. First, Mr. Elmore testified that he saw Appellant on the day of the shooting. Elmore testified that Appellant stated that he was going to kill the victim. (R. p. 74). Elmore, who knew Appellant only by his street name, Roadkill, stated "[w]e was standing there talking and all of a sudden he say he going to kill that dude." (R. p. 74, ll 16-7). Elmore noted that he witnessed Appellant pull out something that Elmore believed could have been a gun. (R. pp. 75-76, 77-78, 79). Elmore indicated he did not really see the gun, but knew that Appellant pulled out something and that Appellant said he was going to kill somebody. (R. p. 77). Second, malice could be inferred from Appellant's use of a firearm in killing the victim. See State v. Belcher, 385 S.C. 597, 612 n.9, 685 S.E.2d 802, 810 n.9(2009)(noting that State can argue for finding of malice from use of deadly weapon in murder, even if jury not given implied malice charge).

Altogether, Respondent submits Appellant was not entitled to a directed verdict on the murder charge. Since the trial court did not err in denying the denying the directed verdict motion as it relates to the murder charge, Appellant's conviction for murder should be affirmed.

[1] Witherspoon later testified that Antron's street name was Liberace. (R. p. 109).

CONCLUSION

For the foregoing reasons, the Respondent respectfully requests this Court to deny Appellant's appeal and affirm his convictions in the murder of Laurice Garvin.

Respectfully submitted,

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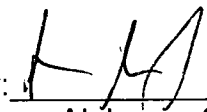
By: 
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October 4, 2012

STATE OF SOUTH CAROLINA
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The Honorable H. William Seals, Jr., Circuit Court Judge
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THE STATE

RESPONDENT,

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MARQUIS SENTEL BREELAND,

APPELLANT

CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., counsel for the Respondent, certify that I have served the within Final Brief of Respondent and Certificate of Compliance on Appellant by depositing three (3) copies of the same via U.S. mail, first class, postage prepaid to his attorney of record, Susan Hackett, Esq., SCCID/Division of Appellate Defense, 1330 Lady Street, Ste. 401, Columbia, SC 29201.

I further certify that all parties required by Rule to be served have been served.

This 4th day of October, 2012.

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007)(requiring redaction of social security numbers, names of minor children, financial account numbers, and home addresses).

This 4th day of October, 2012.

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October 4, 2012

The Honorable Jenny A. Kitchings
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Re: *State v. Marquis Breeland*
Appeal from Allendale County
Appellate Case No. 2011-197633

Dear Ms. Kitchings:

Enclosed for filing in your office is the original and nine (9) copies of the Final Brief of Respondent in the above-referenced case, together with Certificate of Compliance and Certificate of Service.

Thank you for your assistance in this matter.

Sincerely,

Alphonso Simon, Jr.
Assistant Attorney General

AS:dmd
Enclosures
cc: Susan Hackett, Esq. (w/ three copies of encls.)
The Honorable Isaac McDuffie Stone, Solicitor 14th Judicial Circuit (w/copy of encls.)
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