

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Sumter County

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JEVON NICHOLS BROWN,

APPELLANT

Appellate Case No. 2011-203568

ANDERS BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief Appellate Defender

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by refusing to direct a verdict of acquittal where there was no competent direct or substantial circumstantial evidence that appellant committed a burglary in any degree at the victim's home?

STATEMENT OF THE CASE

Appellant was indicted by the Sumter County Grand Jury for the offense of burglary in the first degree. R. 196. His case was called to trial on November 14, 2011 before the Honorable George C. James, Jr., and a jury. David Sullivan represented appellant. Jason Corbett was the assistant solicitor. R. 1.

On November 15, 2011 the jury found appellant not guilty of burglary in the first degree, but guilty of burglary in the second degree. R. 183, ll. 5-10. Judge James sentenced appellant to twelve years imprisonment. R. 194, ll. 15-17.

This appeal follows.

ARGUMENT

The court erred by refusing to direct a verdict of acquittal where there was no competent direct or substantial circumstantial evidence that appellant committed a burglary in any degree at the victim's home.

Relevant Facts

Krystal Malone had her fingerprints on a water jug stolen from the victim's house. She claimed she only kept part of the fifty dollars in change that was inside the jug. Malone lied to the police about the burglary – she said she knew nothing about it. That was her first story. Then she claimed appellant was the burglar unbeknownst to her while she was going for a walk with him. The later assertion came after the police confronted her with the fact her fingerprints were found on the water jug. R. 51, l. 9 – 54, l. 21.

Malone was twenty-one years old at the time of trial and she was living in the Cherryville division of Sumter County. She had moved recently from Florence, and appellant, her boyfriend, was living with her. R. 33, ll. 9-22.

Malone testified that appellant was her ex-boyfriend at the time of trial. Her claim was that she went on a walk with appellant on the day of the burglary and that appellant “motioned for me to hold. Then he went somewhere.” R. 34, l. 14 – 41, l. 6.

Malone maintained a little while later “[w]hen I turned back around, he was coming down the road . . . I seen him with a water jug full of change and a Wii game and an amp.” R. 42, l. 2 – 43, l. 2. Malone said she poured the change out of the water jug, put most of it in her pockets, and she left the water behind off of the side of the road. She estimated there was about fifty dollars in change in the water jug. Malone testified she

bought a cell phone card and “something to drink” with the money. R. 42, l. 17 – 45, l. 17.

On cross-examination, Malone acknowledged she went to the police station with her mother and her step-father when she learned the authorities were looking for her. She admitted she told police she “didn’t know anything about this.” However, when they confronted her about the fact her fingerprints were on the stolen water jug, she then implicated appellant in the burglary. R. 51, l. 9 – 54, l. 21.

Malone also denied she told the police when she made the assertion that appellant was involved that **they** broke into the house to get food. At trial she said told the police appellant told her that was the reason he broke into the house. R. 55, l. 18 – 56, l. 3.

Malone admitted she was aware that burglary in the first degree carried a sentence of fifteen years to life imprisonment, and that second degree burglary carried a possible sentence of fifteen years imprisonment. R. 51, l. 9 – 54, l. 21.

Investigator Lawton Mays testified that when the police went looking for appellant based on Malone’s statement that James Martinez Brown answered the door and he told them he was the only person in the residence. However, Mays said they found appellant “hiding underneath some clothes.” R. 67, l. 13 – 68, l. 20. Mays also said he obtained a search warrant because while he was inside the residence he noticed an amplifier that seemed to match the description of the one stolen from the victim’s house. Property from the burglary was discovered during the search. R. 67, l. 16 – 68, l. 20.

The victim testified that the burglar or burglars entered her house through the kitchen window located in the back of her house. R. 97, ll. 10-14. She said when she returned to town on January 25, 2010, she noticed her house had been broken into. Her

father found the water jug, absent the change, not far from her house. R. 95, l. 24 – 102, l. 6. She finally testified that Malone nor appellant had permission to enter her house. R. 102, ll. 7-16.

Defense counsel moved for a directed verdict and the judge said he understood the motion, but he offered that if the jury happened to believe Malone's testimony, it could convict appellant based on circumstantial evidence "that he was a party to the crime that was allegedly committed on that date." R. 139, l. 8 – 140, l. 4.

Defense counsel argued in closing that Malone's story was totally self-serving and that when appellant's name "came up. She ran with it. She wanted to help herself. Her testimony is not good enough to convict him." R. 162, ll. 8-13.

Discussion

"Mere suspicion" of guilt is insufficient to take the case to the jury, and beyond a directed verdict motion. State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001). Malone did not claim she saw appellant commit a burglary. She asserted appellant disappeared for a time and came back with the water jug.

In State v. Martin, 340 S.C. 597, 533 S.E.2d 532 (2000) our Supreme Court held that the state's circumstantial evidence against Martin was insufficient to take the case to the jury. In Martin the defendant borrowed his girlfriend's car which was later placed near the scene of the murder.

On the morning after the murder the manager of a restaurant found several bags of garbage near the bar where defendant Martin and co-defendant Wilson picked up Martin's girlfriend late the prior night. Inside the trash were items belonging to the victim. Also

found were inside were latex gloves similar to those Martin's girlfriend used to clean her dogs.

When Martin girlfriend's asked him why he and co-defendant Wilson were so late in picking her up from the bar, defendant Martin replied "some shit happened" and co-defendant Wilson added "someone may have died tonight."

Our Supreme Court held that this circumstantial evidence was not substantial circumstantial evidence, and it was insufficient to take the case to the jury. The Court in Martin cited State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984) which was a case which provided a strong suspicion of the defendant's guilt.

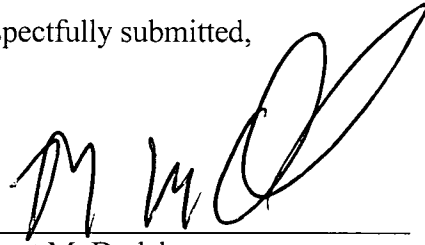
In State v. Schrock, Schrock admitted to the police that he smoked Marlboro brand cigarettes -- the same brand as the cigarette butts found at the murder scene. However, a saliva test could not match a cigarette butts to the defendant. A similar footprint to Schrock's was found at the scene and nearby the scene. Schrock apparently later disposed of the clothes and shoes he had been wearing and he did not present an alibi.

The Supreme Court held this evidence only raised a suspicion of Schrock's guilt and that he was entitled to a directed verdict. The Supreme Court held the same in State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011) , and State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011). Appellant understands this Court does not weigh the credibility of the witnesses on appeal despite the fact Malone's story was incredible. However, Malone's lone assertion that appellant disappeared and returned with the stolen water jug and amp does not constitute substantial circumstantial evidence he committed the burglary in this case.

CONCLUSION

By reason of the foregoing argument, an order of acquittal should be issued.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M M D', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of April, 2013.

STATE OF SOUTH CAROLINA
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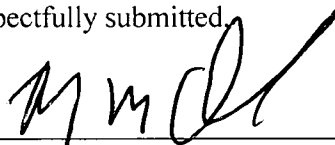
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jevon Nichols Brown states:

1. He is Chief 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 George C. James, Jr., which was held on November 14-15, 2011, 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 Jevon Nichols Brown.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of April, 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR.

April 10th, 2013



Robert M. Dudek
Chief Appellate Defender

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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.

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

April 10th, 2013



Robert M. Dudek
Chief Appellate Defender

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Attorney for Appellant

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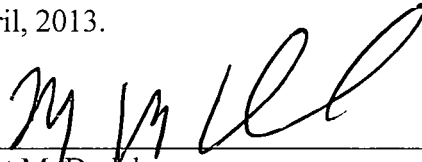
V.

JEVON NICHOLS BROWN,

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CERTIFICATE OF SERVICE

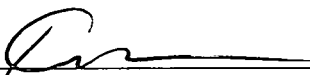
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at P.O. Box 50666, Columbia, SC; and on Jevon Nichols Brown, #324023 at Evans Correctional Institution, this 10th day of April, 2013.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 10th day of April, 2013.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013 .