STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Honorable Doyet A. Early, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

REGINALD JEROME HAMILTON, JR.,

APPELLANT

APPELLATE CASE NO. 2017-002551

ANDERS BRIEF OF APPELLANT

ROBERT M. DUDEK
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

STATEMENT OF ISSUE ON APPEAL

Whether the court erred by denying appellant a directed verdict on the murder charge, where the court applied the "any evidence" standard in denying the directed verdict motion, where this was a circumstantial evidence case, since no witnesses claimed to have seen appellant shoot the decedent and the correct standard was therefore "substantial circumstantial evidence" and not "any evidence"?

STATEMENT OF THE CASE

Appellant was indicted at the October 6, 2014, term of the Aiken County Grand Jury for the offenses of murder and possession of a firearm during the commission of a violent crime. R. 276 – 279. His case was called to trial on December 4, 2017, before the Honorable Doyet A. Early, III, and a jury. Deputy Solicitor J. William Weeks and Assistant Solicitor Ashely Hammack prosecuted the case for the state. Charles H.S. Lyons, III, represented appellant. R. 1.

On December 6, 2017, the jury found appellant guilty on both counts. R. 267, ll. 2-6. Judge Early sentenced appellant to forty years imprisonment, and he imposed a concurrent five-year term for possession of a weapon during the commission of a violent crime. R. 273, ll. 18-23.

This appeal 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 court erred by denying appellant a directed verdict on the murder charge, where the court applied the "any evidence" standard in denying the directed verdict motion, where this was a circumstantial evidence case, since no witnesses claimed to have seen appellant shoot the decedent and the correct standard was therefore "substantial circumstantial evidence" and not "any evidence"

Relevant Facts

Fifty-four-year-old Jimmy Williams grew up in the Petticoat Junction area of Aiken County where the shooting in this case occurred on March 3, 2014. The shooting occurred near the "drinking tree," an area that included three trailers, some chairs, and grills in Petticoat Junction. R. 48, l. 9 – 49, l. 19. Williams had been in this area on March 3, 2014, for about thirty minutes repairing a bathroom in one of the trailers. R. 49, l. 16 – 50, l. 23.

Williams heard several gunshots but he did not remember hearing "any arguing or anything before that." R. 49, l. 16 – 50, l. 23. Williams also said he did not know any of the people who were gathered in the drinking tree area at the time of the shooting. Williams called 911 after the shooting. R. 56, l. 15 – 57, l. 22.

Jackson police officer John Hicks remembered being dispatched to the drinking tree area on March 3, 2014. R. 59, ll. 4 – 22. Hicks recalled that the victim, "Poncho," was leaning up against the tree. "His clothes were bloody and you could tell that he had been shot several times." R. 60, ll. 8-10. Hicks remembered seeing bullet cartridges that were consistent with "an AK-47 or SKS style rifle." R. 62, ll. 12-15.

Joseph Williams was only twenty-one years old at the time of appellant's trial. He would have been eighteen-years-old at the time of the shooting. R. 67, l. 14 – 68, l. 13.

Williams had known appellant most of his life. He remembered seeing appellant at the drinking tree on March 13, 2014, around 7 pm. Williams went by the drinking tree after work. R. 68, l. 14 – 69, l. 23.

Williams testified that appellant asked him for a ride from the drinking tree to his house. Williams obliged, and he brought appellant back to the drinking tree. Williams remembered that appellant had a bookbag with him, but he did not see a gun. R. 70, l. 9 – 73, l. 21.

Williams remembered that when he brought appellant back to the drinking tree, "I got out of the car and I was standing up there [next] to the tree and I heard shots and I ran." R. 73, ll. 22-25. Williams was charged with accessory before the fact of "felony murder" in the case. The state's theory of the case was that appellant went home, got a gun, Williams brought appellant back to the drinking tree where appellant shot Poncho. R. 75, l. 14 – 84, l. 14.

Williams testified that law enforcement gave him the option of being "a co-defendant or a witness" in this case. Williams said for that reason, he implicated appellant in the shooting. Williams subsequently recanted his statement implicating appellant to the police, and he told the jury he did not "see Mr. Hamilton shoot anybody." R. 75, l. 14 – 84, l. 14.

Walter Kitchings testified he saw appellant and Tillman Smith at the drinking tree on the day of the shooting. R. 90, l. 18 – 94, l. 1. Kitchings only offered, "I seen a truck pull up and a guy got out and was just shooting and that was it." R. 94, ll. 2-5. Kitchings said he told the police appellant was shooting a gun that night but he did not claim appellant shot the victim. R. 96, l. 6 – 97, l. 12.

Tillman Smith testified that appellant and the victim, Poncho, whose real name was Isaiah Miles" had "a few words" that evening. R. 109, l. 16 – 111, l. 1.

Tillman saw appellant with a bookbag that evening, but he testified he fell asleep in his truck parked near the drinking tree, and "I think I woke up when I heard the shooting. R. 111, ll. 13-23. At another point during his testimony, Smith seemed to claim that he saw appellant fire the gun in the area where the victim was standing. R. 112, l. 20 – 113, l. 1.

Investigator Chuck Cain testified without objection that he interviewed various witnesses from Petticoat Junction in the drinking tree area on the days following the shooting. Cain said appellant was identified as a suspect in the shooting and that appellant later arrested. R. 159, l. 6 – 162, l. 4. Cain also testified that various witnesses identified appellant as being involved in the crime in some capacity from photographic lineups. R. 163, l. 4 – 168, l. 24; R. 170, ll. 18-24; R. 173, ll. 14-23.

SLED firearms expert James Green testified that cartridges found in the area of the shooting indicated that an AK-47, which Green said was "a banned assault weapon", was used in the shooting. R. 205, l. 2 – 206, l. 17.

Directed verdict motion

At the conclusion of the testimony, appellant moved for a directed verdict of acquittal. R. 216, l. 24 – 217, l. 4. The judge denied the directed verdict motion, observing, "Obviously at this stage in the game, it's not the sufficiency of the evidence, it's whether or not there's any evidence to support the verdict." The judge said under the any evidence standard that he was denying the motion for a directed verdict. R. 217, l. 5 – 218, l. 2.

Discussion

No witness in this case testified unequivocally that he saw appellant shoot the victim. Consequently, the judge was only required to submit the case to the jury if there was any substantial circumstantial evidence which reasonably tended to prove appellant's guilt or from

which his guilt could be fairly and logically deduced. State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001). If the state failed to produce substantial circumstantial evidence appellant committed the murder, he was entitled to a directed verdict. See State v. Rothschild, 351 S.C. 238, 569 S.E.2d 346 (2002); State v. Walker, 349 S.C. 49, 562 S.E.2d 213 (2001).

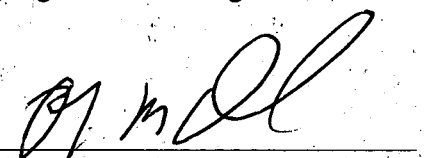
Our Supreme Court has found that a defendant is entitled to a directed verdict of acquittal where the state produced evidence which strongly suggested the defendant was guilty of murder, but which the Supreme Court held still fell short of the "substantial circumstantial evidence" standard. See State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011); State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011); State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000); State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984).

As seen, the trial judge in this case denied the directed verdict citing the "any evidence" standard, which applied only in a direct evidence case. This was a circumstantial evidence case, and the standard again was "any substantial circumstantial evidence" of appellant's guilt. See State v. Lollis; State v. Rothschild, supra.

Since the trial judge applied an incorrect directed verdict standard, appellant's conviction should be vacated. In the alternative, this case should be remanded to the Aiken County Court of General Sessions for a ruling on the directed verdict motion applying the correct legal standard.

CONCLUSION

By reason of the foregoing arguments, appellant's conviction should be vacated. In the alternative, this case should be remanded to the Aiken County Court of General Sessions for a ruling on the appellant's directed verdict motion applying the correct legal standard.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of March, 2019.

STATE OF SOUTH CAROLINA

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Appeal from Aiken County

Honorable Doyet A. Early, Circuit Court Judge

THE STATE,

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REGINALD JEROME HAMILTON, JR.,

APPELLANT.

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Reginald Jerome Hamilton 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 Doyet A. Early, which was held on December 4-6, 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 Reginald Jerome Hamilton.

Respectfully Submitted,

Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT

This 4th day of March, 2019.

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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 indictments;
(2) Trial transcript dated December 4-6, 2017.

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

March 4, 2019

Robert M. Dudek
Chief Appellate Defender

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(803) 734-1330

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."

March 4, 2019.

Robert M. Dudek
Chief Appellate Defender

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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 Melody J. Brown, 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 Reginald Jerome Hamilton, 374926, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 4th day of March, 2019.

Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 4th day of March, 2019.

Courtney Powers (L.S)
Notary Public for South Carolina
My Commission Expires: May 2, 2027.