

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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AUG 19 2013

Appeal from Anderson County

SC Court of Appeals

R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMARIO Q. JONES,

APPELLANT

Appellate Case No. 2012-210189

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

The Trial Court erred in refusing to grant Appellant's motion for a directed verdict where the evidence presented by the State only raised a mere suspicion that Appellant was guilty of first degree burglary, armed robbery, and possession of a weapon during the commission of a violent crime.

STATEMENT OF THE CASE

On July 26, 2011, Jamario Quinton Jones was indicted by the Anderson County Grand Jury for (1) first degree burglary; (2) armed robbery; and (3) possession of a weapon during the commission of a violent crime. R. 233.

A trial was held before the Honorable R. Lawton McIntosh and a jury on February 13-15, 2012. R. 1. Jones was represented by Donald L. Smith, and the State was represented by Rame Campbell and Josh Allen. R. 1.

On February 15, 2012, the jury found Jones guilty of (1) first degree burglary; (2) armed robbery; and (3) possession of a weapon during the commission of a violent crime. R. 209. Judge McIntosh sentenced Jones to twenty-years imprisonment for armed robbery and first degree burglary with the sentences on each to run concurrent. Judge McIntosh also sentenced Jones to five years imprisonment on the charge of possession of weapon during the commission of a violent crime which was to run consecutively to the twenty-year sentence. R. 210-12.

Jones filed a Motion for Reconsideration of the Denial of his Motion for a Directed Verdict and a Motion for a New Trial on February 27, 2012. R. 213; R. 202, 1. 4 – 203, 1. 2. On March 7, 2012, a hearing was held on Jones' post-trial motions where Judge McIntosh orally denied both motions. R. 213-23.

Jones timely filed and served his Notice of Appeal on March 19, 2012.

ARGUMENT

The Trial Court erred in refusing to grant Appellant's motion for a directed verdict where the evidence presented by the State only raised a mere suspicion that Appellant was guilty of first degree burglary, armed robbery, and possession of a weapon during the commission of a violent crime.

A defendant is entitled to a directed verdict at trial when the State fails to present evidence on a material element of the offense charged. State v. Brown, 360 S.C. 581, 586, 602 S.E.2d 392, 395 (2004). The grant of a directed verdict motion for acquittal by a defendant is proper if there is a failure of competent evidence tending to prove the charge. State v. Jackson, 395 S.C. 250, 254, 717 S.E.2d 609, 611 (Ct. App. 2011).

If there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the trial court should submit the case to the jury. Otherwise, "a trial judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty." "Suspicion" implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. State v. Buckmon, 347 S.C. 316, 321-22, 555 S.E.2d 402, 404-05 (2001); see also State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011); State v. James, 362 S.C. 557, 561, 608 S.E.2d 455, 457 (Ct. App. 2004).

The State's evidence that Jones had committed first degree burglary, armed robbery, and possession of a weapon during the commission of a violent crime consisted primarily of the testimony of the two alleged victims, Ronnie Bentley and Darcel Taylor.

Ronnie Bentley testified that on April 15, 2011, she was at her apartment with her friend Darcel Taylor and Taylor's two children. R. 75, ll. 1-13. She said that around 2:00 p.m., Jones knocked on her door and asked if her cousin Byrd was at her apartment. R. 72,

l. 25 – 73, l. 1; 75, l. 17 – 76, l. 15. Bentley told Jones that Byrd did not live with her, and she shut and locked the door. R. 76, ll. 19-21.

Bentley said that her sister then called her on the phone and while she was talking to her sister, she heard another knock on her door. R. 77, ll. 2-5. She said that she opened the door again and it was Jones standing there with a gun in her face telling her to get off the phone and that he told her to get on her kitchen floor. R. 77, ll. 6-10.

Bentley also testified that Jones had a black gun and black gloves, two items he did not have on him the first time he knocked on her door. R. 78, ll. 1- 11.

Bentley said that Jones was going through her kitchen and "scrambling through everything." R. 79, ll. 14-16.

Bentley said that after Jones came into her apartment, Melody Ellis also entered the apartment. R. 81, ll. 21-25. Bentley confirmed that she knew of Melody Ellis and that they had dated the same women. R. 82, ll. 1-5; 98, ll. 9-20. Bentley said Ellis came over to her and was yelling about Bentley "going around talking about me [Ellis] having sex with men" and that Ellis was kicking Bentley and telling Bentley to get up and fight. R. 82, ll. 15-20. Bentley said that Ellis was the only one who physically assaulted her and that Jones never struck or touched her. R. 97, ll. 6-12.

Bentley testified that Jones took about \$350.00 from her person and her apartment. R. 83, l. 18 – 85, l. 1.

Bentley testified that Ellis and Jones were in her home no more than twenty minutes before they left. R. 102, ll. 2-3.

Darcel Taylor testified that on April 15, 2011, she was at Bentley's apartment sitting on the couch and around 12:30 or 1:00 p.m., there was a knock at the door. She said

Bentley answered the door and said "Byrd doesn't live here" and shut the door. R. 54, ll. 14-24; 68, ll. 16-19.

Shortly after the first knock, Taylor said she heard a second knock while Bentley was on the phone with her sister. R. 56, ll. 8-11. Taylor said the next thing she knew a man with a black gun and black gloves was standing there yelling about where's the money. R. 56, ll. 21-25. Taylor said then a female entered the apartment, ranting and raving, "Oh, so you think you all are bad, talking shit, da, da, da, da." R. 57, ll. 9-13. At some point, Taylor said Ellis was kicking her. R. 58, ll. 7-15.

Taylor said Ellis kept on talking to Bentley, saying, "Oh, you think you're so bad, talking about me in the streets," and "Why you with this loser?" R. 59, ll. 18-22. Taylor said the entire episode lasted a good thirty minutes to an hour. R. 66, ll. 1-5. She said at the end, Jones took her phone. R. 70, ll. 17-18.

The evidence presented by the State only raised a mere suspicion of Jones' guilt for several reasons. First, the alleged burglary and armed robbery occurred in an apartment where the only witnesses were the two victims, Bentley and Taylor, and the only evidence of a burglary and armed robbery came from their statements. R. 48, ll. 17-23; 192, l. 24 – 193, l. 1; 196, ll. 5-9. The State's lead investigator, Detective Tommy Johnson, conceded that this case and whether a burglary and armed robbery took place depended on the testimony of the two alleged victims:

Q: So, really this case, again, boils down to the statements of the victims. Correct?

A: As far as what took place in the apartment, Yes, sir.

R. 192, l. 24 – 193, l. 1.

The testimony of these two witnesses about the incident and whether a burglary and armed robbery occurred is quite suspect, however, because at trial, Bentley and Taylor were caught offering false testimony.

Ronnie Bentley testified that two days prior to the incident, on April 13, 2011, she met Jones through her cousin Quenton Byrd. R. 72, l. 21 – 73, l. 2; 99, l. 24 – 101, l. 4. She said this meeting occurred at friend's house. R. 73, ll. 5-9.

Bentley said she saw Jones again on the next day, April 14, 2011, in the afternoon. R. 73, ll. 20-22; 100, l. 7 – 101, l. 4. Bentley said Jones came to her apartment door and asked if Byrd was there. She said she informed Jones that Byrd was not there. R. 73, l. 20 – 74, l. 12.

Darcel Taylor also testified that she saw Jones on April 14, the day before the incident. She said she was off of work that day and was sitting on the couch that day when Jones knocked on Bentley's apartment door on April 14. R. 69, ll. 10-24.

The testimony of Bentley and Taylor that they saw Jones in the two days prior to the incident turned out to be a complete and utter fabrication because Jones had actually been booked into the Anderson County Detention Center on April 6, 2011 and was not released until April 14, 2011 at approximately 4:00 p.m. R. 193, l. 22 – 194, l. 11; R. 236 [Booking Report.] Detective Tommy Johnson even agreed that Bentley could not have met Jones on the dates prior to the incident. R. 198, ll. 5-18.

Bentley's testimony contained other falsehoods as well. Bentley testified that Ellis had never taken marijuana from her before, that she did not have an on-going feud with Ellis, and that this was not the third time Ellis had beat her up. R. 99, ll. 4-19.

Detective Tommy Johnson testified at trial, however, that Ellis and Bentley had been in an altercation prior to the incident. R. 191, l. 22 – 192, l. 3. Detective Johnson also read a report on the stand at trial which stated:

Bentley said that Ellis had robbed her of marijuana, approximately, four years ago. Bentley was delivering some marijuana to Ellis. Bentley gave the marijuana to Ellis and Ellis ran off without paying Bentley.

R. 197, ll. 15-18.

That the two alleged victims would take the stand at trial and falsely testify as to the events surrounding the day of the alleged incident demonstrates that these two witnesses lack any credibility, and the testimony they provided about what happened inside Bentley's apartment on the day of the incident is outright non-reliable. Without the testimony of Bentley and Taylor, the State's remaining evidence as to whether Jones was guilty of first degree burglary, armed robbery, and possession of a weapon during the commission of a violent crime is based purely on speculation, conjecture, and surmise.

There was no forensic evidence taken from the scene and no fingerprints of Jones were identified in the apartment. R. 48, l. 16; 154, l. 13 – 155, l. 16; 182, ll. 5-20. There are no photographs showing the inside of the apartment after the alleged burglary and robbery because those were lost due to some sort of computer software failure on law enforcement's computers. R. 150, ll. 7-19.

Bentley and Taylor both testified that Jones was wearing black gloves when he knocked on the door of the apartment the second time, but these alleged black gloves were never found. R. 186, ll. 15-16. Jones was not in possession of any black gloves at the time of his arrest later that day. R. 201, ll. 22-24. The two members of an EMS squad whose building was located approximately 250 yards from the apartment did not make a note of

seeing Jones with any black gloves when he walked by the EMS building window. R. 21, l. 15 - 22, l. 16; 24, ll. 16-20; 26, ll. 16-21; 28, ll. 3-12; 30, l. 10 - 31, l. 3. Detective Tommy Johnson testified that despite a thorough search of the area in which Jones would have traveled from the apartment to get to the EMS building, no gloves were ever found. R. 181, ll. 1-12.

When Jones was arrested around 5:30 or 6:30 p.m. on the same day as the incident, he was found to only have on him \$202.00 and change, not the \$350.00 the victims alleged was taken from the apartment. R. 159, ll. 10 - 23; 172, ll. 12-20; 183, ll. 3-5; 189, l. 24 - 190, l. 10; 199, ll. 15-17. Detective Johnson conceded that he had no idea if Jones already had this money in his pocket prior to the alleged incident. R. 183, ll. 20-23; 184, ll. 12-15. Ellis did not have any money on her when arrested. R. 189, ll. 22-23.

The cell phone allegedly taken from Darcel Taylor was never found. R. 185, l. 22 - 186, l. 14; 199, l. 18 - 200, l. 5.

At most, this was a case where Melody Ellis wanted to go over and fight with and beat up Ronnie Bentley because Ellis was having some issues with things that Bentley was allegedly saying about Ellis. R. 59, ll. 18-22; 82, ll. 15-20. Ellis consistently said in her statements to law enforcement that going over to Bentley's apartment "just to fight" was the only reason she went to Bentley's apartment. R. 47, ll. 4-24; 49, ll. 5-7; 50, ll. 4-7; 190, l. 25 - 191, l. 8.

In summary, the State's evidence only raises a mere suspicion that Jones was guilty of first degree burglary, armed robbery, and possession of a weapon during the commission of a violent crime. The State failed to present competent evidence proving these three charges.

More specifically and with respect to armed robbery, the State failed to prove the element of a taking. "Armed robbery is defined as the felonious or unlawful taking of money, goods, or other personal property or any value from the person of another or in his presence by violence or by putting such person in fear." State v. Porter, 389 S.C. 27, 39, 698 S.E.2d 237, 243 (Ct. App. 2010).

Jones and Ellis were not found with the \$350.00 allegedly taken from Bentley's apartment. R. 159, ll. 10–23; 172, ll. 12-20; 183, ll. 3-5; 189, l. 22–190, l. 10; 199, ll. 15-17. The State also conceded that the \$202.00 that was found on Jones could have been in his possession prior to the incident. R. 183, ll. 20-23; 184, ll. 12-15. The State also never recovered the cell phone that was allegedly taken. R. 185, l. 22–186, l. 14; 199, l. 18–200, l. 5.

Bentley and Taylor were the only two people who saw the items that were allegedly taken. Based on their other fabricated testimony, it is unknown whether the items existed or were even in the apartment at the time of the incident in the first place. The State at most has only raised a mere suspicion that Jones took anything from Bentley and Taylor warranting an acquittal on the armed robbery charge.

If the State is unable to prove armed robbery, the State is also unable to prove that Jones was guilty of first degree burglary. The offense of first degree burglary requires the State to prove both that a person entered a "dwelling without consent" and "with an intent to commit a crime in the dwelling." S.C. CODE ANN. § 16-11-311(A).

There is no competent evidence to establish that Jones entered Bentley's apartment with an intent to commit a crime. The State cannot show that anything was taken, eliminating any alleged intent to commit an armed robbery while inside the apartment.

Melody Ellis consistently provided statements to law enforcement that her only intent in entering Bentley's apartment was to fight with and beat up Bentley. R. 47, ll. 4-24; 49, ll. 5-7; 50, ll. 4-7; 190, l. 25 – 191, l. 8. The State offered no evidence whatsoever of Jones' intent in entering Bentley's apartment, and therefore, a directed verdict for Jones on first degree burglary is also proper where the State only raised a mere suspicion of Jones' intent in entering the apartment.

Finally, the State's lack of competent evidence to prove either armed robbery in violation of § 16-11-330(A) or first degree burglary in violation of § 16-11-311 also means that Jones cannot be convicted for possession of a weapon during the commission of a violent crime in violation of § 16-23-490.

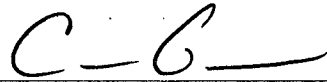
The State's case against Jones for first degree burglary, armed robbery, and possession of a weapon during the commission of a violent crime was based solely on the testimony of the two alleged victims who were the only ones who knew what went on inside Bentley's apartment that day, and those two witnesses provided false testimony at trial. The State is required to prove that Jones was guilty beyond a reasonable doubt, and if false testimony by the two sole eyewitnesses does not create reasonable doubt, then there is no such thing.

This coupled with the fact that the jury only deliberated for approximately thirty minutes after a two and a half day trial with nine witnesses undermines any confidence that Jones received a fair trial. R. 225 [Motion]; R. 206-09. The Trial Court should have granted Jones' directed verdict motion when the evidence presented by the State merely raised a suspicion that Jones was guilty of the charged crimes.

CONCLUSION

For the foregoing reasons, Appellant Jamario Quinton Jones respectfully requests this Court to reverse the Trial Court and issue an Order of Acquittal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C-V-G', is written over a horizontal line.

Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of August, 2013.

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."

August 19th, 2013



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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Jennifer Ellis Roberts, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 19th day of August, 2013.



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 19th day of August, 2013.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.