

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Horry County

Honorable Steven John, Circuit Court Judge

RECEIVED

MAR 15 2019

S.C. SUPREME COURT

JAMES A. WILSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001432

ANDERS BRIEF PURSUANT
TO WHITE V. STATE

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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether the trial court erred in denying Wilson's motion for a directed verdict on the charge of murder, where the State failed to offer any substantial circumstantial evidence that Petitioner intended to kill the decedent with malice aforethought, where witnesses did not see him shoot her, and where Petitioner testified it was an accident?

STATEMENT

James Wilson was indicted by an Horry County grand jury for possession of a weapon during the commission of a violent crime and murder on September 17, 2015. App. 528 – 531. He proceeded to trial before the Honorable Steven John and a jury on June 27, 2016. App. 1. George DeBusk and Seth Oskins appeared on behalf of the State, and Ralph Wilson, Sr. represented Petitioner. Following a three-day trial, the jury found Petitioner guilty of the possession of a weapon charge and guilty of the lesser-included offense of voluntary manslaughter. App. 424 l. 17 – App. 425 l. 5.

Judge John sentenced Petitioner to twenty-seven years' incarceration on the voluntary manslaughter charge and five years concurrent on the possession of a firearm charge. App. 438 ll. 6 – 24.

This brief, filed contemporaneously with a petition for writ of certiorari under Rule 243(i)(1), SCACR, 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 trial court erred in denying Wilson’s motion for a directed verdict on the charge of murder, where the State failed to offer any substantial circumstantial evidence that Petitioner intended to kill the decedent with malice aforethought, where witnesses did not see him shoot her, and where Petitioner testified it was an accident.

Relevant facts

On May 8, 2015, Nigeria McDonald was accidentally shot while she was attempting to break up a fight between two women, Trudy Cox and Jamie Spivey. App. 63 l. 11 – 14; App. 67 l. 20 – App. 70 l. 8; App. 73 l. 5 – App. 76 l. 10. Spivey was Petitioner’s girlfriend. App. 67 l. 19 – App. 68 l. 6.

Although she claimed to see see Petitioner allegedly strike the decedent before she was shot, Cox did not see who fired the shot, and she did not see Petitioner immediately after the shot was fired. App. 75 l. 16 – App. 76 l. 3; App. 78 ll. 12 – 16. Cox testified that Spivey started the fight, and the gunshot ended it. App. 105 ll. 9 – 13.

Spivey’s mother, Schanski Hemingway, observed the fight. App. 110 ll. 10 – 22. She did not see who fired the shot, and more importantly, she never saw Petitioner. App. 112 ll. 3 – 18. Hemingway saw a man named Kendrick Green pull a gun out of his pants after the decedent was shot. App. 120 l. 12 – App. 121 l. 23. Hemingway testified that she never saw a man with a gun besides Green that night. App. 112 ll. 2 – 4.

Regarding the fight, Green testified that Petitioner “mashed [the decedent] in the face and told her to stop, let them fight.” App. 128 ll. 4 – 8. Green indicated that the decedent

“attempt[ted] to swing at [Petitioner], and while her arm was extended, [Petitioner] shot her through the heart.” Id.

Green, supposedly a friend of the decedent, was so concerned that she had been shot that he was going to take the gun “and go hunt for this fellow and try to kill him.” App. 133 ll. 19 – 23. Green had previously been made aware that “there was a fight that was supposed to happen” between the two women App. 126 ll. 13 – 18.

Petitioner turned himself in to law enforcement officers at the Freemont Baptist Church the next morning. App. 27 ll. 1 – 5; App. 305 ll. 3 – 10. He testified at trial in his defense and confirmed that Spivey, his girlfriend, was pregnant at the time of the fight. App. 324 l. 3 – App. 326 l. 25. Like the decedent, he was trying to break up the fight. Id. Petitioner testified with great detail about how he came into contact with the decedent:

She put her weight into me. She wasn't like [pushing] me or [trying] to hit me or nothing, she was just trying to budge me out of the way. When she budged me out of the way, her hip hit my hip, and my gun fell off my hip. So when my gun fell off my hip I picked my gun up. And she was kind of like - - I guess she [saw] my gun [fall] off my hip, but she was like this, and my gun fell off my hip. I picked the gun up, and she looked at me. She turned like this and looked at me. So I wasn't holding my gun like this, it was like this (indicates), and I pushed her. I was, Man, you need to chill (indicates). When I pushed her, she fell, like she stumbled back and tried to catch herself like this (indicates), but as soon as she fell back, she tried to grab me, but when she tried to grab me to keep the balance, she grabbed me and slid and her hand was on my hand like this (indicates). So I yanked, but when she first grabbed, the gun was like this and I ain't had my gun tight, you know what I'm saying. When she grabbed my gun, it almost fell out of my hand, so I yanked my gun and all I hear is, Boom, the gun went off. So I'm like - - she [fell]. She was like this, and she [spun], the whole body [spun]. By then, I ain't think - - I didn't think I hit her.

App. 325 l. 14 – App. 326 l. 13. Petitioner testified that there was never a time when he wanted or intended to shoot the decedent or anyone else. App. 331 ll. 11 – 22.

The cause of death, as found by Dr. Nicholas Batalis, was a gunshot wound to the chest. App. 261 ll. 17 – 21. At the conclusion of the State's case-in-chief, counsel for Petitioner moved

for a directed verdict “on the grounds that the evidence that has been produced by the State fails to meet the elements of either murder and/or possession of a pistol during the course of a violent crime.” App. 278 ll. 11 – 17. The trial court denied the motion. App. 278 l. 18 – App. 280 l. 14.

After the defense rested, counsel again renewed the motion. App. 366 ll. 3 – 17. The motion for a directed verdict was again denied. Id. Counsel again renewed all of his previous motions after the jury’s verdict was announced. App. 427 ll. 3 – 12. The motions were denied. App. 427 l. 13 – App. 429 l. 1.

Discussion

The State’s case against Petitioner was largely circumstantial. “Murder is the killing of any person with malice aforethought, either express or implied.” S.C. Code Ann. § 16-3-10. During the State’s case-in-chief, although a few witnesses observed the fight, only a few had knowledge regarding the shooting.

When ruling on a motion for a directed verdict, the trial court is concerned with the existence or non-existence of evidence, not its weight. State v. Williams, 303 S.C. 274, 400 S.E.2d 131 (1991); State v. Green, 327 S.C. 581, 491 S.E.2d 263 (Ct.App.1997). On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State. State v. Rowell, 326 S.C. 313, 487 S.E.2d 185 (1997); State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984). If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, this Court must find the case was properly submitted to the jury. State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998); State v. Huggins, 325 S.C. 103, 481 S.E.2d 114 (1997).

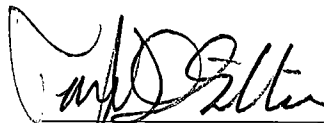
When a case is built wholly on circumstantial evidence, if the State fails to produce substantial circumstantial evidence the defendant committed a particular crime, he is entitled to a

directed verdict. State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011). “The trial court should grant a directed verdict motion when the evidence presented merely raises a suspicion of guilt.” State v. Bostick, 392 S.C. 134, 142, 708 S.E.2d 774, 779 (2011). The State has the burden of proving “the accused was at the scene of the crime when it happened and that he committed the criminal act”. State v. Schrock, 283 S.C. 129, 133, 322 S.E.2d 450, 452 (1984). “The [trial] court should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty.” State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000).

When the evidence submitted raises a mere suspicion that the accused is guilty, a directed verdict should be granted because suspicion implies a belief of guilt based on facts or circumstances which do not amount to proof. State v. Hepburn, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013). Even in the light most favorable to the State, there is not enough evidence to indicate that Petitioner acted with malice. A jury therefore could not find Petitioner guilty of murder beyond a reasonable doubt. The trial court should have directed a verdict in Petitioner’s favor.

CONCLUSION

Petitioner respectfully requests this Court reverse his convictions based upon the trial court's error in failing to direct a verdict in his favor.

A handwritten signature in black ink, appearing to read "Taylor D Gilliam", written over a horizontal line.

Taylor D Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 15th day of March, 2019.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Horry County

Honorable Steven John, Circuit Court Judge

JAMES A. WILSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for James Wilson states:

- (1) He is an Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent Petitioner.
- (2) He has reviewed the record of Petitioner's trial before Judge Steven John, which was held on June 27 – 29, 2016, 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 James Wilson.

Respectfully Submitted,



Taylor D Gilliam
Appellate Defender
ATTORNEY FOR PETITIONER

This 15th day of March, 2019.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Honorable Steven John, Circuit Court Judge

JAMES A. WILSON,

PETITIONER

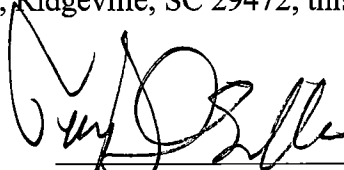
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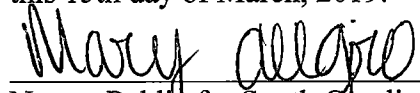
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief pursuant to White v. State in the above referenced case has been served upon Johnny Ellis James, Jr., Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of Anders Brief pursuant to White v. State has been served on James Abdula Wilson, #339674, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 15th day of March, 2019.



Taylor D Gilliam
Appellate Defender

SUBSCRIBED AND SWORN TO before me ATTORNEY FOR PETITIONER
this 15th day of March, 2019.

 (L.S)
Notary Public for South Carolina
My Commission Expires: 5/12/2027