

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable R. Ferrell Cothran, Circuit Court Judge

ORIGINAL

THE STATE,

RESPONDENT,

V.

DAVID JAMEL MCCOY,

APPELLANT

APPELLATE CASE NO 2018-001203

ANDERS BRIEF OF APPELLANT

RECEIVED

FEB 19 2019

SC Court of Appeals

WANDA H. CARTER
Deputy Chief Appellate Defender

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Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in denying appellant's motion for a directed verdict of acquittal on the arson charge because there was insufficient proof that appellant acted willfully and maliciously in connection with the burning.

STATEMENT OF THE CASE

Appellant David Jamel McCoy was convicted of third degree arson per jury trial held during the June 2018 term of the Sumter County General Sessions Court before Judge R. Ferrell Cothran and sentenced to imprisonment for a period of six years. Also, appellant pled guilty to failure to stop at the close of the arson jury trial and received a two-year prison sentence. Appellant was represented by Jason Bridges at the trial and guilty plea proceeding, and Assistant Solicitor W. Jason Corbett appeared on behalf of the state.

Appellant appealed his trial court arson conviction and sentence in this case. 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 trial judge erred in denying appellant's motion for a directed verdict of acquittal on the arson charge because there was insufficient proof that appellant acted willfully and maliciously in connection with the burning.

At trial, Laquetta Maisha Bell testified that she and appellant were dating in 2013, but that when she found out that appellant had a girlfriend (after he told her that he was no longer seeing the girlfriend), then she ended her relationship with appellant. On August 5, 2013, appellant reacted badly to the break-up by kicking in the back door of her trailer and pouring lighter fluid on the bed, and then "put[ting] a light to it." Bell and her cousin responded by grabbing the comforter, rolling it up, and taking it outside. R. 39, l. 13-p. 45, l. 13. R. 42, l. 1-13; R. 44, l. 4-10. Bell stated that she in effect forgave appellant and they remained friends thereafter. R. 64, l. 14-p. 67, l. 3. Appellant did not testify at trial and did not present defense witnesses at trial.

At the close of the case for the state, defense counsel moved for a directed verdict based on the sufficiency of the evidence (lack of) presented by the state. The trial judge denied the motion. R. 95, l. 17-p. 96, l. 11.

A person is guilty of third degree arson if he or she willfully and maliciously sets fire to burn, or causes a burning which results in damage to a building or structure. S.C. Code Ann. §16-11-110(c)(Supp. 2007). Here, the state presented no evidence that appellant willfully and maliciously burned anything because he acted in the heat of passion in frustration over a breakup rather than willfully and maliciously. In other words, the state did not prove willful intent. By

analogy, note that murder, which is a killing with malice,¹ can be reduced to involuntary manslaughter if malice is missing due to the presence of provocation (and sudden heat/passion).² However, in the case at bar, appellant's actions were akin to provocation and in effect sank to the level of an absence of willful intent. Willfulness is a form of intent or purpose to be determined by the facts. State v. Taylor, 312 S.C. 179, 439 S.E.2d 820 (1993); State v. Jeffries, 316 S.C. 13, 446 S.E.2d 427 (1994). Note that voluntary manslaughter requires criminal intent;³ however, the corpus delicti for arson is burned property and the criminal agency which caused the burning, i.e., that the burning was the willful or intentional act of a person. State v. Williams, 321 S.C. 381, 468 S.E.2d 655 (1996). Based on the facts of this case, appellant lacked willful intent and was therefore not guilty of arson (3rd degree) because he acted sans any willful intent.

A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. State v. McKnight, 352 S.C. 635, 576 S.E.2d 168 (2003). The judge should grant a directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. State v. Zeigler, 364 S.C. 94, 610 S.E.2d 859 (Ct. App. 2005). The state may present direct or substantial circumstantial evidence reasonable tending to prove the defendant's guilt. State v. Mollison, 319 S.C. 41, 459 S.E.2d 88 (Ct. App. 1995). Here, there was insufficient proof of appellant's guilt on the arson charge and as a result, the directed verdict motion should have been granted in the case.

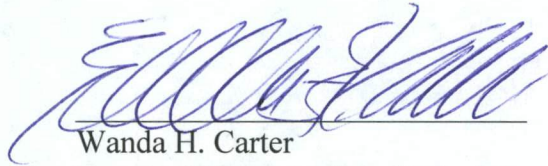
¹ State v. Watson, 349 S.C. 272, 563 S.E.2d 336 (2002).

² State v. Hollard, 385 S.C. 159, 682 S.E.2d 898 (2012).

³ State v. Niles, 412 S.C. 515, 772 S.E.2d 877 (2015).

CONCLUSION

Based on the foregoing argument, appellant's arson conviction should be vacated.

A handwritten signature in blue ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of February, 2019.

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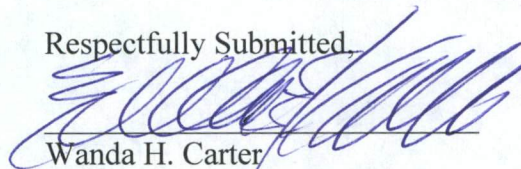
PETITION TO BE RELIEVED AS COUNSEL

Counsel for David Jamel McCoy states that:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge R. Ferrell Cothran, which was held on June 21, 2018, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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, She asks the Court to relieve her as counsel for David Jamel McCoy.

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

This 19th day of February, 2019.

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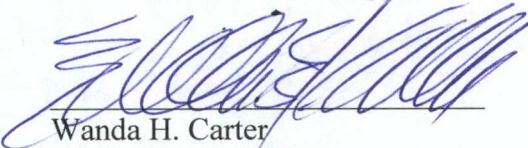
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment
- (2) Entire trial transcript dated June 21, 2018
- (3) Notice of Appeal

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

February 19, 2019



Wanda H. Carter
Deputy Chief Appellate Defender

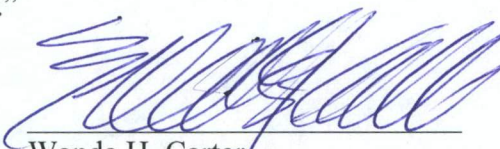
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ATTORNEY FOR APPELLANT

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."

February 19, 2019



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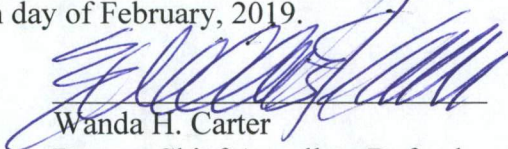
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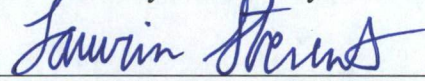
APPELLANT

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 J. Benjamin Aplin, 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 David Jamel McCoy, 324184, at Tyger River Correctional Institution, 200 Prison Road, Upper Yard, Enoree, SC 29335-9308, this 19th day of February, 2019.


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 19th day of February 2019.

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