

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Greenwood County

Honorable Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

THOMAS ALLEN SMITH,

APPELLANT

APPELLATE CASE NO. 2018-001133

ANDERS BRIEF OF APPELLANT

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Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred in refusing to grant appellant's motion for directed verdict because the State did not present substantial circumstantial evidence of appellant's guilt, especially where the State declined to call the witness who could link appellant to the white car the police believed was involved in this bank robbery?

STATEMENT OF THE CASE

On June 20, 2016, a Greenwood County jury indicted appellant for armed robbery. R. 497-498. On June 11, 2018, appellant was tried before the Honorable Donald B. Hocker and a jury. R. 1. Yates Brown and Micah Black represented the State. R. 1. Carson Henderson represented appellant. R. 1. The jury convicted appellant. R. 451. Judge Hocker sentenced appellant to eighteen years' imprisonment. R. 470. 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 refusing to grant appellant's motion for directed verdict because the State did not present substantial circumstantial evidence of appellant's guilt, especially where the State declined to call the witness who could link appellant to the white car the police believed was involved in this bank robbery.

The State's evidence only created a suspicion of appellant's guilt and was insufficient to survive directed verdict. The South State Bank in Greenwood was robbed on the afternoon of February 18, 2016. R. 77. A man waiting in line cut in front of another customer and handed the teller a note and a blue bag. R. 77-79. The note said the robber had a bomb and this was a robbery. R. 77-79. Inside the bag was an object the teller assumed was the bomb, but on further reflection she thought "it looked like maybe some CD cases put together with rubber bands or wires or something." R. 78.

The teller gave the robber bait money and a dye packet along with over two thousand dollars. R. 79-85. R. 70. The dye packet was designed to trigger automatically when it is removed from the bank, causing a smoke cloud. R. 72-76. However, the dye packet did not trigger because the light switch controlling the electronic sensors was taped into the "off" position. R. 72-76. The bank's corporate security denied this meant the robbery was an inside job, claiming that perhaps an electrician had miswired the alarm. R. 72-76. However, he failed to explain the tape over the switch. R. 72-76.

No one in the bank was able to identify appellant as the robber. Instead, the State used the testimony of James Adams, a man with an ax to grind against appellant, to identify appellant from the bank's surveillance video. R. 135-47. Appellant declined to use Adams' wife, a realtor, to list appellant's parents' house for sale. R. 140-43. Adams tried to avoid defense

counsel's questions on this topic, responding, "My wife ain't got nothing to do with this, young man." R. 140, ll. 18-21.

The police found some clothing under a tarp that resembled the clothing worn by the robber in the bank video. R. 307-12. Appellant's car also resembled the description of a car seen driving erratically by a police officer and other witnesses immediately after the robbery, but the bank employees only saw the robber leave on foot. R. 199-200. The officer's dash camera video was lost by the police with only a still shot of the footage remaining, which was entered into evidence. R. 205. R. 277.

The police found no fingerprints at the bank, even though the robber did not wear gloves. R. 284. State's Ex. 1. The police found no DNA evidence. R. 284. The police never recovered the bag, the purported bomb, the note, or the bait money. R. 285-86. R. 396-98. Even though the police found appellant at a hotel where the bill was paid in cash, they did not match up the money at the hotel to the bank's bait money. R. 396-98.

Throughout the trial, defense counsel repeatedly objected to the State's failure to link appellant to the bank robbery through a missing witness, Andrew Holmes. R. 114-34. R. 161-196. Holmes worked at a furniture store near the bank. R. 123-24. He saw someone run from the bank and get into a white car. R. 123-24. The State did not call Holmes as a witness at trial.

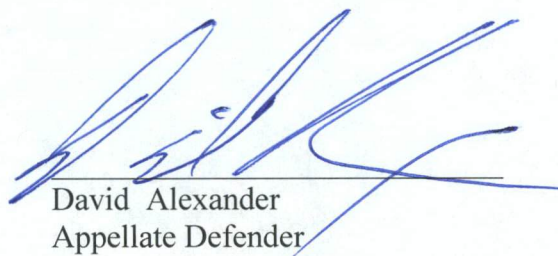
Appellant moved for a directed verdict and argued that without Holmes' testimony, they had no evidence linking appellant to the robbery. R. 403-04. Appellant argued, "Basically, they failed to link it up. They haven't laid the foundation, for want of a better term." R. 403-04. The trial judge erred in denying appellant's motion for a directed verdict because without any evidence from Holmes, the State failed to produce substantial circumstantial evidence of appellant's guilt. See State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011).

In Odems, the circumstantial evidence was as follows: (1) the defendant was found in a car with the burglars and the stolen goods, (2) the defendant fled from the police, and (3) the defendant “asked an uninvolved person to lie for him” to the police. The unconvincing reason the defendant supposedly fled was because the driver told him that he had a suspended license. Odems at 585, 720 S.E.2d at 49. Absent the contested evidence from Adams, appellant’s case is like Odems because the clothing found at appellant’s house merely casts suspicion on appellant. It is not substantial and this case should not pass directed verdict.

In State v. Arnold, 361 S.C. 386, 389, 605 S.E.2d 529, 530-31 (2004), the defendant’s fingerprint was found on a coffee cup in a car borrowed by the victim. The victim disappeared after leaving his office in Savannah, Georgia, and his body was found three days later in Colleton County. Id. at 388, 605 S.E.2d at 530. The borrowed car was found in Johnson City, Tennessee near where the defendant called another witness the day after the crime. Id. at 388-89, 605 S.E.2d at 530. The defendant and the victim had been sexual partners. Id. This Court held that a directed verdict should have been granted because the fingerprint only established that defendant “was in the borrowed [car] on the same day the victim was last seen alive.” Id. at 390, 605 S.E.2d at 531. The fact that the car was found in Tennessee near the defendant only raised “a suspicion of guilt.” Id. The evidence in Arnold is far stronger than the evidence against appellant. Like the car in Arnold, the clothing is only suspicious. The State failed to call the one witness necessary to get their case past directed verdict and this Court should reverse.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's conviction and remand this case for a new trial.

A handwritten signature in blue ink, appearing to read 'David Alexander', is written over a horizontal line. The signature is stylized and extends to the right of the line.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of April, 2019.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

APR 01 2019

SC Court of Appeals

Appeal from Greenwood County

Honorable Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

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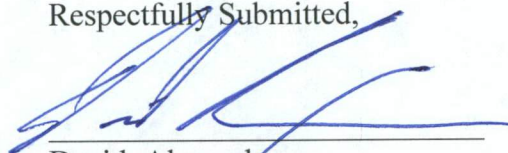
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Thomas Allen Smith states:

1. He is an 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 the Honorable Donald B. Hocker, which was held on June 11-14, 2018, 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 Thomas Allen Smith.

Respectfully Submitted,



David Alexander
Appellate Defender
ATTORNEY FOR APPELLANT

This 1st day of April, 2019.

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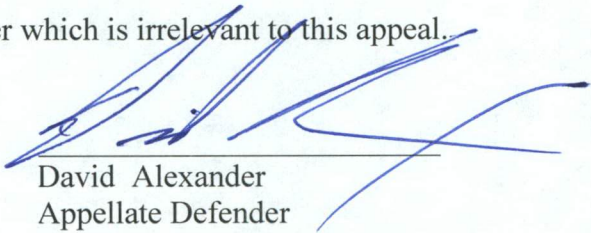
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed Indictment
- (2) Trial Transcript (June 11-14, 2018)
- (3) Court's Exhibit #2 (Report)
- (4) Court's Exhibit #3 (Search Warrant)
- (5) Court's Exhibit #4 (Search Warrant)
- (6) State's Exhibit #1 (DVD)

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

April 1, 2019



David Alexander
Appellate Defender

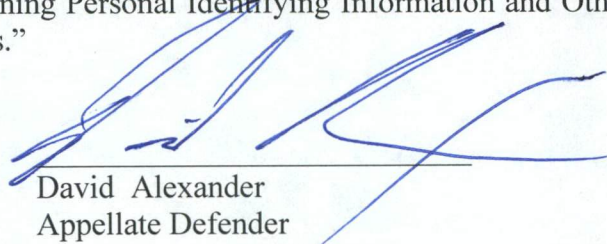
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ATTORNEY FOR APPELLANT

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."

April 1, 2019.



David Alexander
Appellate Defender

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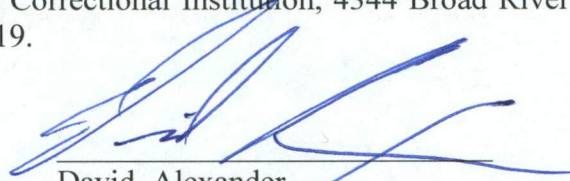
V.

THOMAS ALLEN SMITH,

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 Thomas Allen Smith, 376868, at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 1st day of April, 2019.



David Alexander
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 1st day of April, 2019.

Courtney Powers (L.S)

Notary Public for South Carolina
My Commission Expires: May 2, 2027.