STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

Honorable Perry H. Gravely, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CASEY DAJUAN GETER,

APPELLANT

APPELLATE CASE NO. 2018-000812

ANDERS BRIEF OF APPELLANT

ROBERT M. DUDEK
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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by refusing to direct a verdict on the charge of burglary in the second degree where appellant could not be identified as the burglar who appeared on several surveillance cameras, and the only evidence against appellant was that he was seen driving in close proximity to the business when it was being burglarized, since this did not constitute "substantial circumstantial evidence" of appellant's guilt that was required to withstand a directed verdict motion?

STATEMENT OF THE CASE

Appellant was indicted by the Pickens County Grand Jury for the offenses of burglary in the second degree and grand larceny. R. 238 – 239. His case was called to trial on April 19, 2018, before the Honorable Perry H. Gravely, and a jury. David Cantrell, Jr., represented appellant. Britni M. McCall was the assistant solicitor. R. 1.

On April 20, 2018, the jury found appellant not guilty of grand larceny but guilty of burglary in the second degree. R. 227, ll. 6-11. Judge Gravely sentenced appellant to eight years imprisonment suspended on the service of three years imprisonment. R. 236, ll. 16-19.

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 refusing to direct a verdict on the charge of burglary in the second degree where appellant could not be identified as the burglar who appeared on several surveillance cameras, and the only evidence against appellant was that he was seen driving in close proximity to the business when it was being burglarized, since this did not constitute "substantial circumstantial evidence" of appellant's guilt that was required to withstand a directed verdict motion.

Relevant Facts

David Vinson is the owner of the Hobby Connection store in Easley. Vinson described it as a "full-line hobby shop. We focus on radio-controlled cars, planes, helicopters, boats. So it's a full-line hobby shop." "Big boy toys," and pretty expensive. R. 39, ll. 6-23.

It was undisputed that on the morning of August 18, 2016, at about 5:00 a.m., someone broke into the Hobby Connection by entering through a vent in the ceiling. R. 40, l. 14 – 41, l. 6. Vinson had a sixteen-camera "DVR recording system" in and around his store, and there were also surveillance cameras at the nearby Hot Spot which showed his store from the outside. R. 44, ll. 5-19.

When the alarm system at the Hobby Connection activated around 5:00 that morning Vinson got a call from the Pickens County Sherriff's Department, and he went to his store. "I noticed that the front window was busted out." Vinson turned the alarm system off "so that's not blaring in our ears . . ." and he noticed that no lights were on inside the store. This was very unusual, since he always left lights on overnight. Vinson also recalled that merchandise had been moved off of the shelves and stacked next to the wall. R. 46, l. 1 – 47, l. 4.

On redirect examination, the solicitor asked Vinson if he recognized appellant, who was sitting in the courtroom. Vinson claimed he recognized appellant because he "[h]as been in the store with some other customers that are more regular. I wouldn't call him a regular customer. But I do recognize him from coming in the store with other customers." R. 52, ll. 7-13. As will be seen infra, appellant later testified in his own defense and he denied ever having been in the Hobby Connection store.

As stated, there were many surveillance cameras angles and film footage excerpts that were played for the jury. However, Pickens County Sherriff's Department Detective Art Taylor admitted that none of the videotaped evidence played identified appellant as a person committing the burglary. R. 137, l. 3 – 138, l. 1; R. 140, ll. 18-22. Detective Taylor also admitted that there was no incriminating evidence from the burglary that could be traced to appellant. R. 140, ll. 18-22.

In her closing argument to the jury, the solicitor acknowledged the state's slim evidence, "Do we have his face on surveillance [video]? No, we don't. He may not have been smart about many things. But he did cover his face when he ran by those cameras. We tried to get fingerprints, but he was wearing gloves. So we don't have any fingerprints to match him to this crime." R. 191, ll. 18-22.

The state's case against appellant consisted of the fact he was driving a "suspicious vehicle" that was near the Hobby Connection store at the time of the 5:20 a.m. burglary on August 18, 2016. R. 82, l. 24 – 84, l. 14. Pickens County Sherriff's Deputy Reed Kent remembered while he was at the Hobby Connection store investigating that morning, "we observed a suspicious vehicle driving down Lamar Road. The vehicle then turned right, turned left, and travelled back towards Greenville County. The vehicle, when it drove by, was

travelling at a slow rate of speed for Highway 123. I did shine my flashlight on the vehicle just to see the occupants inside." R. 84, ll. 1-14.

Kent said he pulled in behind this car, and followed it to the nearby Hot Spot. "I did not initiate my blue lights. I had turned on my cruise lights, which are lights on the side of our light bar. The driver of the vehicle who identified [himself] as the defendant, Casey Geter," stopped there. Kent remembered that appellant did not have a shirt on and he had a pair of black skinny jeans on. Kent said he remembered appellant had mud "down the front of his jeans. And I identified him as Casey Geter . . . with his identification." The state would later speculate that the mud could have come from the crime scene since there were puddles outside the Hobby Connection on the morning of the burglary. R. 84, l. 1 – 85, l. 25.

However, Kent admitted he did not see anything that made appellant suspicious after he talked to appellant at the Hot Spot within minutes after the burglary. Appellant was not detained or arrested. Kent did not investigate appellant any further, and the speculation came from others trying to solve the Easley burglary. R. 89, ll. 12-17.

Deputy Detective Taylor testified that surveillance cameras showed "the subject running away at 5:17," and "at 5:20:50, Deputy Kent spotted the car on camera 11." R. 122, ll. 1-22. The inference the solicitor asked the jury to draw was that appellant was the "subject running away," and that Deputy Kent spotting appellant's car three minutes later was sufficient evidence to prove appellant's guilt. R. 120, ll. 1-22. All of the surveillance camera evidence is on file with this court to review and confirm that none of it showed appellant as the burglar.

Directed verdict motion

Defense counsel moved for a directed verdict, arguing "there's no evidence that this defendant was in this building or was the individual shown on the videos." R. 144, l. 11 – 145, l.

3. The judge denied the directed verdict motion, ruling, "I believe that the circumstantial evidence, at this point, the jury could make it a factual issue of whether that was him at the location or not based on the testimony. They did see the vehicle come out. And they identified him as in the vehicle in question. So I believe there's testimony sufficient enough for this matter to go to the jury." R. 145, ll. 4-12.

Appellant's testimony

As stated, appellant testified in his own defense and said he had never been in the Hobby Connection store before. Appellant denied he was the man seen on the surveillance cameras. R. 164, ll. 5-23.

Appellant said he was in Easley that morning because he was seeing another woman there that he had met online. Appellant pulled his vehicle over to the side of the road to call his wife, and that was the only reason he was in the area of what turned to be the burglary that morning. This was also why Deputy Kent ultimately pulled in behind him on Highway123 before appellant stopped at the Hot Spot. R. 152, l. 11 – 163, l. 15.

Improper trial tactics

The jury learned appellant had pled guilty to prior burglaries and the solicitor improperly argued this impeaching evidence could be used against appellant as substantive evidence of appellant's guilt in this burglary. R. 153, ll. 9-18. The solicitor said, "He thinks he can fool us . . . But he had a hard time keeping up with his own lies just yesterday. And then, also, when the defendant testified, he admitted that he has a history of committing burglaries. R. 188, ll. 3-11.

On cross-examination of appellant, the solicitor also improperly pitted appellant's testimony against the testimony of Deputy Kent as to whether the deputy "turned his lights on" when he pulled behind appellant in the Hot Spot parking lot. Appellant told the solicitor: "I

didn't say he [Deputy Kent] was lying," after she asked him if he was calling Deputy Kent a liar. R. 172, ll. 3-19.

Discussion

Trial courts should not refuse to grant a motion for a directed verdict where the evidence, as here, merely raises the suspicion that the accused is guilty. See, State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000). The judge must grant a motion for a directed verdict unless the state presents "substantial circumstantial evidence" to the jury that the defendant is guilty. See, State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004).

In State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000), the victim testified that Mitchell had been over to his house on a couple of occasions, and that Mitchell had also attended a social gathering at the victim's home for about forty-five minutes to one hour. A police officer investigating the burglary found glass on the victim's floor, and there was a screen from which the officer was able to get an identifiable fingerprint. That fingerprint matched Mitchell. Our Supreme Court held that the state had failed to produce *substantial circumstantial evidence* reasonably tending to prove the guilt of the accused, and ruled that a directed verdict should have been issued.

In State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000) the Supreme Court also held the defendant was entitled to a directed verdict in that murder case. There was evidence a vehicle was seen on the night of the murder in the victim's apartment complex that was very similar to the car in which Martin and his co-defendant were traveling that night. Further, when Martin and his co-defendant were late picking up Martin's girlfriend the defendant told her "some shit happened," and the co-defendant added, "somebody may have died tonight." State v. Martin, 340 S.C. at 600, 533 S.E.2d at 601.

Evidence tied to the murder scene in Martin was also found in trash cans surrounding the bar where Martin's girlfriend worked. This Court held that all of this evidence, while certainly raising a strong suspicion of Martin's guilt, was insufficient to withstand a directed verdict motion.

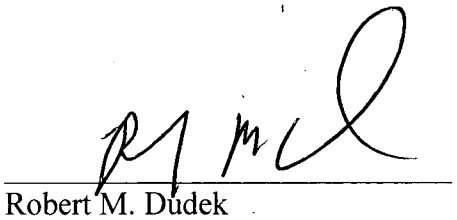
Further, in State v. Schrock, 288 S.C. 129, 322 S.E.2d 450 (1984), the Supreme Court held that evidence the defendant was in the area of the murder scene, and evidence that footprints at the scene were similar to his footprints were insufficient to take the case to the jury. In State v. Schrock, there was also evidence that Marlboro cigarette butts were found at the murder scene, and Schrock admitted to the police that he smoked Marlboro cigarettes. Further, tests performed on an oil can at the scene did not supply any *conclusive* connection between the crime scene and the defendant. The Supreme Court held Schrock was entitled to a directed verdict given these facts.

The state's only evidence against appellant was that his car was seen in the area of the Hobby Connection store on the morning of the burglary. A deputy followed appellant's car to the Hot Spot that was nearby. The deputy talked to appellant at the Hot Spot and he found nothing suspicious about him that would warrant appellant being detained.

The state did not present "substantial circumstantial evidence" of appellant's guilt in this case. A directed verdict should have been granted.

CONCLUSION

By reason of the foregoing arguments, an order of acquittal should be issued by this Court.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of May, 2019.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

Honorable Perry H. Gravely, Circuit Court Judge

THE STATE,

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CASEY DAJUAN GETER,

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Casey Dajuan Geter 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 Perry H. Gravely, which was held on April 19 - 20, 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 Casey Dajuan Geter.

Respectfully Submitted,

Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT

This 21st day of May, 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 dated April 19-20, 2018;
(3) State's Exhibits 14, 15, 16, and 17 (DVD video surveillance);
(4) State's Exhibits 18 and 19 (snapshots);
(5) State's Exhibit 20 (Flash drive video surveillance);
(6) Defense Exhibit 1 (Flash drive video surveillance).

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

May 21, 2019

Robert M. Dudek
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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."

May 21, 2019.

Robert M. Dudek
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STATE OF SOUTH CAROLINA

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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 William M. Blitch, 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 Casey Dajuan Geter, 330251, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067, this 21st day of May, 2019.

Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 21st day of May, 2019.

(L.S)
Notary Public for South Carolina
My Commission Expires: July 26, 2028