

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

ORIGINAL

RECEIVED

SEP 27 2019

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MARCUS QUANTE TODD,

APPELLANT

APPELLATE CASE NO 2018-002024

ANDERS BRIEF OF APPELLANT

JESSICA M. SAXON
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in failing to direct a verdict of acquittal on the charge of murder where the state failed to present any direct or substantial circumstantial evidence of the corpus delicti of the offense?

STATEMENT OF THE CASE

On July 22, 2016, a Spartanburg County grand jury indicted Appellant for murder and kidnapping. R. 393. The state, represented by Derrick Balsa and Megan Moricle, called the case to trial before the Honorable J. Derham Cole and a jury on September 19, 2017. R. 20. Patricia J. Anderson represented Appellant. R. 20.

The jury found Appellant guilty as charged. R. 382. Judge Cole sentenced Appellant to life imprisonment for the murder and imposed no sentence on the kidnapping conviction pursuant to S.C. Code Ann. § 16-3-910 and 16-3-20. R. 390-391.

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 failing to direct a verdict of acquittal on the charge of murder where the state failed to present any direct or substantial circumstantial evidence of the corpus delicti of the offense.

Relevant Facts

On March 23rd, 2016, Jérmaine West was visiting with family and friends at his aunt's house on Woodruff Street in Woodruff, South Carolina. R. 118, ll. 7-12; R. 120, ll. 8-17. Appellant was also on Woodruff Street that day and had been at the home of Tavis Jeter, known as "Big Tav," where the incident occurred. R. 170, ll. 1-17.; R. 32, l. 25 – R. 33, l. 1. West suffered a gunshot wound and was bleeding but alive when Appellant placed West in his black Tahoe and drove him away from the scene. R. 123, ll. 5-12.

West's body was never recovered. R. 155, ll. 17-18. The Tahoe was discovered in the woods off a cattle trail three days after the shooting. R. 153, ll. 23-24; R. 210, ll. 10-13. Blood was located at the scene of the shooting and inside the Tahoe. R. 149, l. 7; R. 226, ll. 13-18. That blood was tested, and the test revealed the blood was from an unidentified male individual who was consistent with being a biological offspring of Eva Thompson and Bobby West, West's parents. R. 283, ll. 14-25 – R. 284, ll. 1-3; R. 284, ll. 8-10.

The state contends Appellant was on Woodruff Street that day to visit with Tavis "Big Tav" Jeter and Olajawaun Goggins at Jeter's house. R. 170, ll. 3-24. Appellant was leaving the house and walking back to his vehicle when West arrived. R. 101, ll. 6-14; R. 171, ll. 14-17. Appellant purportedly pulled his vehicle up to Jeter's house, approached West and told him he was going to "pay for his brother's sins." R. 163, ll. 1-17. Appellant is alleged to have pulled out a gun that he and West wrestled over before a shot was fired. R. 164, ll. 2-5. Appellant

supposedly then shot West multiple times, placed West in his Tahoe and left the scene. R. 106, ll. 10-14, 21-24. West was still alive when he was placed inside Appellant's Tahoe. R. 123, ll. 11-12. A cellphone recording taken by a bystander did not show the shooting but did show Appellant putting West in the Tahoe. (State's Ex. 1, on file with this Court).

Appellant testified he was on Woodruff Street that day to purchase marijuana from Jeter. R. 309, ll. 21-25. Appellant arrived at Jeter's house and was directed inside by Olajawaun Goggins to purchase marijuana. R. 310, ll. 5-12. After purchasing the marijuana Appellant heard one gunshot from outside. R. 310, ll. 13-17. Appellant went outside and saw Goggins holding a firearm. R. 310, ll. 19-21. Goggins raised the gun at Appellant before running off as people started coming toward the disturbance. R. 310, ll. 22-25. Appellant began to run to his Tahoe before deciding he could not leave West; Appellant grabbed West under the shoulders and helped him to Appellant's vehicle. R. 311, ll. 1-7. Appellant told West he was taking him to the hospital. R. 311, ll. 14-15.

While stopped at a stop sign, Appellant saw Goggins in a back alley. R. 312, ll. 14-15. Goggins approached the vehicle and got into the Tahoe with Appellant and West. R. 312, ll. 18-20. Goggins told Appellant to continue driving and eventually made Appellant get out of the vehicle. R. 313, ll. 1-12. Goggins threatened to kill Appellant's family if Appellant told anyone what happened. R. 313, ll. 12-14. Goggins took off with West in the car. R. 313, ll. 18-21. West was alive and talking when Appellant was forced out of the car. R. 315, ll. 5-12. That was the last time Appellant saw the Tahoe or West. R. 315, ll. 2-4; R. 335, ll. 5-7.

At the conclusion of the state's case-in-chief, Appellant moved for a direct verdict arguing the state had not proven that West was dead or that Appellant had intentionally shot West. R. 295, ll. 15-17; R. 296, ll. 1-4. The state argued that it was clear West had been shot

multiple times and that there was substantial circumstantial evidence that West was deceased. R. 296, ll. 6-10. The judge denied the motion on the basis that there was substantial direct evidence that Appellant had shot West and substantial circumstantial evidence that would tend to establish that West is in fact dead. R. 296, ll. 17-24. At the close of all evidence, Appellant renewed his motion for directed verdict on the same grounds previously stated. R. 339, ll. 8-15. The judge again denied the motion. R. 339, ll. 16-17.

Discussion

In a murder case, the corpus delicti consists of two elements: the death of a human being and the criminal act of another causing the death. State v. Speights, 263 S.C. 127, 208 S.E.2d 43 (1974). The corpus delicti must be established by the best proof obtainable, direct evidence is not essential, and such may be sufficiently proved by circumstantial evidence when that is the best obtainable. Id. at 131, 208 S.E.2d at 45. For a case to be submitted to a jury there must be direct or substantial circumstantial 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)).

In State v. Owens, 293 S.C. 161, 359 S.E.2d 275 (1987), the South Carolina Supreme Court held that the circumstantial evidence surrounding the victim’s sudden disappearance, considered with the unlikelihood of his voluntary departure as shown by his personal habits and relationships, was sufficient to establish the corpus delicti of murder. At trial the state presented statements made by the defendant about the murder, physical blood and hair evidence, a typed ransom note sent to the victim’s son copies of which were found in possession of the defendant, the sale of the victim’s personal items by defendant’s children and the fact that defendant was the

individual who picked up the ransom money. Id. at 164, 359 S.E.2d at 276. Further the state offered evidence of the victim's need of life-sustaining medications that were left behind, the victim's substantial financial means which were never accessed after his disappearance, and the incongruity of the victim's failure to appear for work obligations or maintain contact with his family and friends. Id.

Likewise, in State v. Weston, 367 S.C. 279, 625 S.E.2d 641 (2006), the Supreme Court ruled the evidence offered at trial, while circumstantial, was clearly sufficient to withstand a motion for a directed verdict. As there was in Owens, the amount of circumstantial evidence presented at trial in the Weston case was substantial.

The defendant in Weston was accused of killing his mother. Id. at 284, 625 S.E.2d at 644. At trial the state offered evidence of his mother's active social life, her change in demeanor after her son moved in with her, and her intention to tell her son he had to move out. Id. at 293, 625 S.E.2d at 649. Conflicting statements from the defendant about his mother's whereabouts after she disappeared, along with other incriminating statements and blood evidence found throughout the apartment he shared with his mother were also presented at trial. Id. Additionally, evidence of the defendant's odd behavior which included lining the trunk of his mother's car with plastic, loading trash bags into the truck, and calling in sick for the days prior to and just after the alleged disappearance, and evidence of physical injuries to the defendant consistent with being in a struggle were offered by the state. Id.

Unlike in Owens and Weston, the state's case here lacks substantial circumstantial evidence to prove the corpus delicti of murder. At trial the state put up various members of West's family who all testified that although Appellant shot West, West was alive when he was

driven away from the scene. Since that day they have not heard from West even though prior to that day they saw him daily.

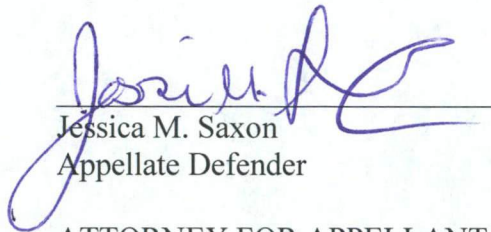
Furthermore, the forensic evidence offered by the state in this case was weak and questionable. The blood collected from the scene of the incident, as well as from the Tahoe, could not be definitively linked to West. The best the state could offer was that the blood was an unknown male consistent with being the biological offspring of West's parents. The state asserted West had a brother and there was no testimony that an elimination standard was taken and compared to that individual. No evidence was presented from any medical expert that the amount of blood at the scene or in the Tahoe came from a fatal injury or that such loss of blood could lead to death.

Appellant testified at trial that he did not shoot West. While he admitted on cross-examination he had initially told his trial counsel that he had shot West in the leg in self-defense, he maintained on the stand that he was not the one who fired a gun at West.

At the time of the altercation West was a young man who could have survived a single gunshot wound to a non-vital area. Without testimony as to where West was shot, how many times West was shot, and whether the alleged blood loss was significant enough to cause death the corpus delicti of murder was not met. Simply having West's family testify that he would not just disappear after this incident occurred did not meet the threshold of substantial circumstantial evidence that is required to prove the corpus delicti in no-body murder cases.

CONCLUSION

Based on the foregoing, Appellant requests that this court grant Appellant's motion for a directed verdict of acquittal on the charge of murder and remand for resentencing on the kidnapping charge.


Jessica M. Saxon
Appellate Defender
ATTORNEY FOR APPELLANT

This 27th day of September, 2019.

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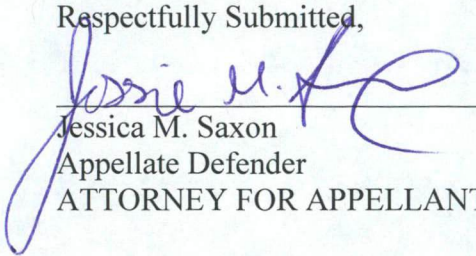
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Marcus Quante Todd states:

1. He is 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 J. Derham Cole, which was held on September 18 - 20, 2017, 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 Marcus Quante Todd.

Respectfully Submitted,



Jessica M. Saxon
Appellate Defender
ATTORNEY FOR APPELLANT

This 27th day of September, 2019.

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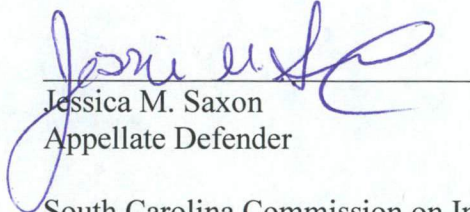
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s):
- (2) Transcript of Hearing held September 18, 2017
- (3) Transcript of Trial held September 19-20, 2017
- (4) State's Exhibit No. 1 (Video)

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

September 27, 2019



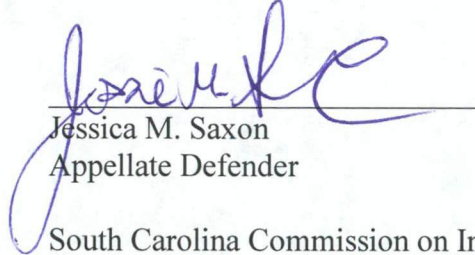
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CERTIFICATE OF COUNSEL

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."

September 27, 2019.



Jessica M. Saxon
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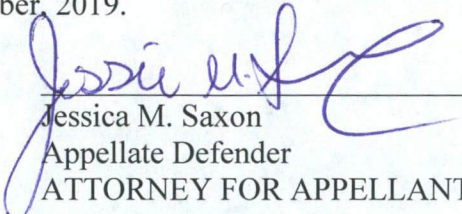
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MARCUS QUANTE TODD,

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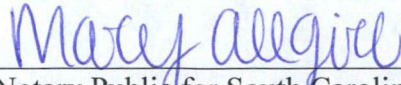
CERTIFICATE OF SERVICE

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 Melody J. Brown, 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 Marcus Quante Todd, 373979, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 27th day of September, 2019.



Jessica M. Saxon
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 27th day of September, 2019.

 (L.S)

Notary Public for South Carolina
My Commission Expires: May 12, 2027.