ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Cherokee County

Honorable R. Keith Kelly, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ALLEN CHARRON WILLIAMS, JR.

APPELLANT

RECEIVED
OCT 14 2019
SC Court of Appeals

APPELLATE CASE NO. 2019-000123

INITIAL BRIEF OF APPELLANT

SARAH SHIPE
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL 1

STATEMENT OF THE CASE 2

STANDARD OF REVIEW 3

ARGUMENT

The trial judge erred in denying Appellant's motion for directed verdict where there was insubstantial circumstantial evidence that Appellant was the shooter 4

Introduction 4
Relevant facts 4
Discussion 5

CONCLUSION 9

TABLE OF AUTHORITIES

Cases

State v. Ballenger, 322 S.C. 196, 470 S.E.2d 851 (1996) 3

State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011) 7

State v. Butler, 407 S.C. 376, 755 S.E.2d 457 (2014) 3

State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2004) 3

State v. Hepburn, 406 S.C. 416, 753 S.E.2d 402 (2013) 3

State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001) 6

State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000) 6, 7

State v. Mitchell, 341 S.C. 134, 535 S.E.2d 126 (2000) 6

State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011) 3, 6, 7

STATEMENT OF ISSUE ON APPEAL

Did the trial judge err by denying defense counsel's motion for directed verdict where the state failed to introduce substantial circumstantial evidence that Appellant was the individual who shot at the truck?

STATEMENT OF THE CASE

On November 16, 2017, a Cherokee County grand jury indicted Appellant for three counts of attempted murder and three counts of possession of a weapon during commission of a violent crime. R.* (indictment).

Appellant's case was called to trial on January 15, 2019, before the Honorable R. Keith Kelly and a jury. Tr. 1. Travis Moore represented Appellant. Tr. 1. Assistant solicitor George Kendell and assistant solicitor Kimberly Leskanic represented the state. Tr. 1.

On January 16, 2019, the jury found Appellant guilty of assault and battery of a high and aggravated nature, two counts of first-degree assualt and battery, and possession of a weapon during the commission of a violent crime. Tr. 241-42. Judge Kelly sentenced Appellant to twenty years' and two five-year terms imprisonment to run consecutively and a concurrent term of five years' imprisonment. Tr. 249-50; R. (sentence sheet).

This appeal follows.

STANDARD OF REVIEW

"[W]hen the State fails to produce substantial circumstantial evidence that the defendant committed a particular crime, the defendant is entitled to a directed verdict." *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011); *see Hepburn*, 406 S.C. at 429, 753 S.E.2d at 408 ("In cases where the State has failed to present evidence of the offense charged, a criminal defendant is entitled to a directed verdict."). Further, when the State relies exclusively on circumstantial evidence and a motion for a directed verdict is made, the trial judge is concerned with the existence or non-existence of evidence, not with its weight. *State v. Cherry*, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004). The trial judge "should not refuse to grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty." *Id.* "'Suspicion' implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." *Id.* "However, a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis." *State v. Ballenger*, 322 S.C. 196, 199, 470 S.E.2d 851, 853 (1996). "On appeal from the denial of a directed verdict, [the] Court views the evidence and all reasonable inferences in the light most favorable to the State." *State v. Butler*, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014).

ARGUMENT

The trial judge erred in denying Appellant's motion for directed verdict where there was insubstantial circumstantial evidence that Appellant was the shooter.

Introduction

One evening, two young men, Caleb and Wesley, and their step-father were driving their truck around a neighborhood. Caleb rode in the bed of the truck and Wesley and their step-father rode in the cab. Tr. 55, ll. 3-23; Tr. 68, l. 8-Tr. 69, l. 15. They drove around the same loop multiple times until a woman, out on her porch, yelled at them, "why [do] y'all keep driving by." They stopped the truck, and shortly after a shot was fired at the truck injuring Caleb. Tr. 59, ll. 10-14; Tr. 71, l. 12-Tr. 72 l. 2. When police arrived, Appellant's neighbor, Sierra Mckinney, and her sister, Christa Hall, told police they saw Appellant with a gun at some point before hearing the gunshot. Tr. 82, l. 22-Tr. 85, l. 17; Tr. 107, ll. 8-11. Appellant was detained, his hands were tested for gunshot residue (GSR), and his residence and the surrounding area was searched. Tr. 122, ll. 5-9; Tr. 127, ll. 1-18. The results of the GSR kit showed a single particle of GSR on Appellant's left palm. No physical evidence related to the shooting was found during the search of Appellant's home or the surrounding area. Tr. 127, ll. 2-9; Tr. 132, l. 18-Tr. 133, l. 11; Tr. 166, ll. 13-21; Tr. 168, ll. 1-25; Tr. 173, l. 11-Tr. 174, l. 16; Tr. 177, ll. 11-20. Appellant was indicted on three counts of attempted murder and three counts of possession of a weapon during the commission of a violent crime. R.*

Relevant facts

At trial, Caleb and Wesley testified a woman yelled at them from a porch and neither saw who fired the gun. Tr. 59, ll. 10-14; Tr. 63, ll. 12-25; Tr. 64, l. 18-Tr. 65, l. 3. Wesley claimed he saw a man right before the truck turned on the street where the shot was fired but he did not

see a gun. Tr. 74, ll. 3-5. Sierra testified she was out on her porch that evening with Christa and they were concerned because the truck drove by multiple times. Tr. 81, l. 18-Tr. 82, l. 13. Sierra admitted they called out to the truck, "what are you doing." Tr. 91, ll. 3-10. Sierra and Christa claimed they saw Appellant acting "aggravated." Tr. 82, l. 22-83, l. 9; Tr. 105, ll. 21-25. Both women allegedly saw Appellant carrying a gun before they heard a gunshot but neither could recall exactly how much time passed between seeing Appellant and hearing the gunshot. Tr. 83, l. 22-Tr. 85, l. 22; Tr. 94, l. 12-Tr. 95, l. 9. On direct, Sierra seemed unsure about the timeline of events. She first testified that she saw Appellant with a gun ten or fifteen minutes before she heard a gunshot. Sierra later said it maybe have been less than ten or fifteen minutes. Tr. 85, ll. 14-17. Then, on cross-examination, Sierra admitted she did not remember much of what happened that night. Tr. 95, ll. 6-13. On direct, Christa claimed she saw Appellant run off with a gun seconds before hearing a gunshot. Tr. 109, ll. 6-17. During cross-examination, Christa grudgingly admitted she told police she saw Appellant walk away before hearing the gunshot. Tr. 115, l. 18-Tr. 116, l. 16. At trial, no one testified that they saw Appellant shoot at the truck. Tr. 94, ll. 6-7; Tr. 114, ll. 6-7. The results from the GSR kit administered on Appellant revealed a single particle on his left palm, which SLED expert admitted, could have been the product of transfer. Tr. 166, ll. 13-21; Tr. 168, ll. 1-25; Tr. 173, l. 11-Tr. 174, l. 16; Tr. 177, ll. 11-20. Police did not find a gun, shells, or any other physical evidence of the shooting during their search of Appellant's residence or the surrounding area. Tr. 127, ll. 2-9; Tr. 132, l. 18-Tr. 133, l. 11.

Discussion

At trial, the state offered scant circumstantial evidence that Appellant was the shooter. The evidence showed Appellant was present, in the neighborhood where he lived, at the time the

incident occurred, and Appellant was seen with a gun at some point before the gunshot was heard. However, the evidence did not show who shot at the truck that night.

In *State v. Mitchell*, 341 S.C. 134, 535 S.E.2d 126 (2000), the South Carolina Supreme Court held the lower court erred in failing to direct a verdict where the only evidence presented against defendant was his fingerprint at the scene of the burglary. Similarly, in *State v. Lollis*, 343 S.C. 580, 541 S.E.2d 254 (2001), the South Carolina Supreme Court directed a verdict of acquittal in defendant's favor where the state presented no direct evidence that defendant was involved in setting fire to his home. The circumstantial evidence against defendant was that his wife admitted to the arson, defendant had placed valuables in storage prior to the fire, defendant possessed a key to the storage unit, and defendant allegedly had financial troubles. In that case the court found the evidence insufficient. *Lollis*, at 585, 541 S.E.2d at 257.

In *State v. Martin*, 340 S.C. 597, 533 S.E.2d 572 (2000), the South Carolina Supreme Court directed a verdict of acquittal in defendant's favor where the state failed to meet the "any substantial evidence" standard. In that case the state presented evidence that a car resembling the one defendant was driving was seen parked at the victim's apartment complex on the night of the murder. *Martin*, at 600, 533 S.E.2d at 573. The state also presented evidence defendant and co-defendant were late picking up defendant's girlfriend from work and when his girlfriend asked why they were late defendant replied, "some shit happened" and co-defendant added "somebody may have died tonight." *Id.*

In *State v. Odems*, 395 S.C 582, 720 S.E.2d 48 (2012), the South Carolina Supreme Court held defendant was entitled to a directed verdict based upon a lack of substantial circumstantial evidence that defendant was involved in the burglary. Although defendant was in a car with other individuals who admittedly burglarized a home, the state failed to provide substantial

circumstantial evidence that defendant was present during the home invasion. The witness who saw individuals at the home claimed she saw two, not three as were found in the car. *Odems*, at 584, 720 S.E.2d at 49. Fingerprints collected from the stolen goods did not match defendant's but matched the other individuals in the car. *Id.* at 588, 720 S.E.2d at 51. One of the individuals who admitted his involvement claimed defendant was picked up after the burglary at a gas station. *Id.*

In *State v. Bostick*, 392 S.C. 134, 141, 708 S.E.2d 774, 778 (2011), the South Carolina Supreme Court held the state failed to present substantial circumstantial evidence of defendant's guilt. Rather, the state's evidence could produce only a suspicion of defendant's guilt. *Id.* Although the police found items belonging to the victim in a burn pile behind the home of defendant's mother, the court held no evidence linked defendant to the evidence in the burn pile and the prosecution presented no testimony that defendant had control over the burn pile. *Id.* at 137-141, 708 S.E.2d at 775-778. The only other evidence presented against defendant was that he had a chemical pattern that matched gasoline on his shoes and gasoline was used to start the fire at the victim's home, and DNA from blood on defendant's jeans excluded ninety-nine percent of the population, but the expert could not testify the DNA matched the victim. *Id.* at 142, 708 S.E.2d at 778.

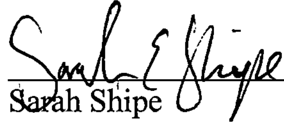
The case at bar has less circumstantial evidence than the cases mentioned above where the court found the lower court should have directed a verdict in defendants' favor. In *Martin*, there was evidence presented that could be construed as an admission of guilt as well as a car matching the description of the car defendant was driving was seen at victim's apartment on the night of the murder. *Martin*, at 600, 533 S.E.2d at 573. In *Bostick*, the victim's belongings were found in a burn pile behind defendant's mother's home and defendant had blood on his jeans.

Here, when the state closed its case, only the following pieces of circumstantial evidence had been presented Sierra and Christa claimed they saw Appellant with a gun and one particle of GSR was found on Appellant's hand.

Conversely, the state offered no evidence that anyone saw Appellant shoot at the truck and police did not find a gun or shells during their search of Appellant's residence or the surrounding area. Certainly, Appellant was in the area at the time of the incident but so were the two neighborhood witnesses that testified at trial. Police did no investigation into the either Sierra or Christa, who claim they saw Appellant with a gun before the gunshot. Sierra and Christa are the same individuals Caleb and Wesley heard yelling at them right before their truck was shot at. Christa gave a written statement the night of the incident and then changed it when she testified at trial. Additionally, police did not search Sierra's residence where she, admittedly, had guns and police did not perform GSR testing on anyone other than Appellant. Tr. 95, l. 20-Tr. 96, l. 4. Perhaps, had there been additional investigation into the incident, more would be known about exactly what happened that night. All that is known is Sierra and Christa were out on the porch and noticed a truck kept driving by, they both claim they saw Appellant with a gun, either Sierra or Christa yelled at the truck, the truck stopped, and someone shot at the truck injuring the Caleb. The state presented zero direct evidence and insubstantial circumstantial evidence that the shooter was Appellant. Thus, the trial judge should have directed a verdict in Appellant's favor because the evidence presented only raised a suspicion of guilt.

CONCLUSION

Based on the foregoing, Appellant requests this Court reverse the trial court and grant his motion for a directed verdict.



Sarah Shipe
Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of October, 2019.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED
OCT 14 2019
SC Court of Appeals

Appeal from Cherokee County

Honorable R. Keith Kelly, Circuit Court Judge

THE STATE,

RESPONDENT,

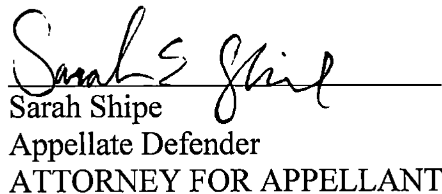
V.

ALLEN CHARRON WILLIAMS, JR.

APPELLANT

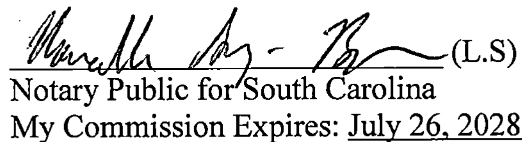
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Initial 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 Initial Brief of Appellant and Designation of Matter have been served on Allen Charron Williams, #365344, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 14th day of October, 2019.



Sarah Shipe
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me this 14th day of October, 2019.



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