

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County SC Court of Appeals
Doyet E. Early, Circuit Court Judge

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DEC 10 2019

THE STATE

RESPONDENT

✓

BERTRAM MERLE BROWN

APPELLANT

APPELLANT CASE NO. 2018-001429

ANDERS PRO SE BRIEF OF APPELLANT

BERTRAM MERLE BROWN - 234970
PRO SE

990 WISACKY HWY.
BISHOPEVILLE, SC 29010

copy

ISSUES FOR APPEAL

APPELLANT HAS TWO ISSUES. THE FIRST ISSUE WAS PROPERLY RAISED AND PRESERVED. APPELLANT REQUESTS THE COURT HEAR THE SECOND ISSUE VIA A WHITE VS STATE (STATE V WHITE) REVIEW DUE TO BOTH ISSUES BEING INTERWOVEN AND LOCKED TOGETHER, AND TO PROMOTE JUDICIAL ECONOMY.

FIRST ISSUE

DID THE TRIAL COURT COMMIT REVERSIBLE ERROR BY DENYING THE MOTION FOR A DIRECTED VERDICT ON THE BURGLARY CHARGE?

1) TRIAL COUNSEL ARGUED THE STATE HAD NOT PROVED THE ELEMENT OF BURGLARY.

A) THE STATE OFFERED NO EVIDENCE THAT BROWN WAS ACTUALLY IN THE VICTIM'S HOME. THE VICTIM ADMITTED THE HOME WAS WELL LIT (P63-L8-9), AND THAT HE SAW WHAT THE BURGLAR LOOKED LIKE (P64-L9-13). YET HE DID NOT OR COULD NOT IDENTIFY BROWN AS THE BURGLAR.

2) THE STATE ARGUED THAT IT MET ITS BURDEN BY DIRECT EVIDENCE AND SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE. (P127).

A) THE DIRECT EVIDENCE IS:

- I) BROWN IS A BLACK MALE
- II) BROWN IS WEARING CLOTHES MATCHING THE GENERAL DESCRIPTION OF THE BURGLAR'S CLOTHES
- III) BROWN IS APPREHENDED IN GENERAL VICINITY OF CRIME
- IV) BROWN IS APPREHENDED WHERE STOLEN PROPERTY IS FOUND AND HAS CLIP, CHANGE, AND RING IN HIS POSSESSION.

THESE PROVEN FACTS ARE DIRECT EVIDENCE THAT GIVES RISE TO A LEGAL INFERENCE THAT BROWN IS THE BURGLAR. HOWEVER, AN INFERENCE IS CIRCUMSTANTIAL EVIDENCE AND MUST BE WEIGHED VIA THE "CIRCUMSTANTIAL EVIDENCE CHARGE". IN A CRIMINAL CASE, THE EVIDENCE MUST POINT TO THE GUILT OF THE ACCUSED, TO THE EXCLUSION OF EVERY OTHER REASONABLE HYPOTHESIS. THUS, IF THERE IS AN EXPLANATION FOR THE EVIDENCE OTHER THAN THE GUILT OF THE ACCUSED, IT CANNOT SUPPORT THE CHARGE.

APPELLANT OFFERS THE FOLLOWING IN EXPLANATION OF THE EVIDENCE:

- 1) THE AREA THE CRIME OCCURED IN IS POPULATED BY A SUBSTANTIAL BLACK POPULATION. SO, BROWN IS NOT THE ONLY BLACK MALE IN THE AREA
- 2) THE CLOTHES BROWN IS WEARING ARE COMMON "OFF-THE-SHELF" ITEMS. IT WOULD BE UNREASONABLE TO ARGUE THAT

Nobody else was wearing similar color clothes that day.

- 3) THERE IS A REASONABLE EXPLANATION WHY BROWN WAS IN THE AREA. HE HAD RECENTLY EATEN LUNCH AT THE SALVATION ARMY ACROSS THE STREET.
- 4) BROWN IS APPREHENDED WHERE THE BICYCLE AND STOLEN PROPERTY ARE FOUND. BUT OFFICER ODENTHAL COULD NOT PUT BROWN IN POSSESSION OF EITHER ONE. THERE WAS NO EVIDENCE THAT BROWN OWNS A BICYCLE.
- 5) BROWN WAS IN POSSESSION OF THE CUP, CHANGE, AND RING. BUT OFFICER ODENTHAL SAW HIM WALK OVER TO THE RIGHT SIDE OF THE ROAD AND PICK THE CUP UP AS HE APPROACHED BROWN IN HIS PATROL CAR (P 88-66-7 AND P 89-66-11). THIS SUPPORTS THE PROPOSITION THAT BROWN SAW THE CUP WHILE WALKING ALONG THE ROAD AND WALKED OVER AND PICKED IT UP. THERE IS NO DIRECT EVIDENCE BROWN WAS TRYING TO HIDE ANYTHING.

CONCLUSION

THE STATE CAN PUT BROWN IN POSSESSION OF THE CUP, CHANGE, AND RING, BUT CANNOT LINK BROWN TO THE BICYCLE, GUN, OR VICTIM'S HOME. IT IS MORE LIKELY THAN NOT OFFICER ODENTHAL ACTUALLY WITNESSED BROWN FINDING THE CUP, CHANGE, AND RING. THEREFORE, COUNSEL'S MOTION FOR A DIRECTED VERDICT ON THE BURGLARY CHARGE SHOULD HAVE BEEN GRANTED — AS THE JUDGE WAS THE JURY AT THAT POINT AND SUBJECT TO THE CIRCUMSTANTIAL

EVIDENCE CHARGE.

SECOND ISSUE

DID THE TRIAL COURT COMMIT REVERSIBLE ERROR BY NEGLECTING TO CHARGE THE JURY ON CIRCUMSTANTIAL EVIDENCE WHEN THE STATE WAS DEPENDANT UPON CIRCUMSTANTIAL EVIDENCE TO MEET ITS BURDEN ON THE ELEMENT OF BURGLARY.

- 1) IT IS INCUMBANT UPON THE TRIAL COURT TO CHARGE THE JURY ON THE EVIDENCE IN A TRIAL. ALTHOUGH THE STATE AND TRIAL COUNSEL MAY REQUEST A SPECIFIC CHARGE, THE TRIAL COURT BEARS SOLE RESPONSIBILITY ON WHAT TO CHARGE THE JURY.
- 2) THE TRIAL COURT'S FAILURE TO GIVE THE CIRCUMSTANTIAL EVIDENCE CHARGE VIOLATED APPELLANT'S 14TH AMEND. RIGHT TO PROCEEDURAL DUE PROCESS AND 6TH AMEND. RIGHT TO A FAIR TRIAL ACCORDING TO LAW. AS A RESULT, THE JURY VERDICT IS UNRELIABLE.

CONCLUSION

ALTHOUGH THE EVIDENCE IN THIS CASE IS INCRIMINATING, IT IS CIRCUMSTANTIAL. DUE TO A LACK OF DIRECT EVIDENCE

PLACING APPELLANT W THE VICTIM'S HOME — ESPECIALLY THE VICTIM'S FAILURE TO IDENTIFY BROWN AS THE BURGLAR AFTER CLEARLY SEEING THE BURGLAR, THE CONVICTION SHOULD BE VACATED AND REMANDED TO THE LOWER COURT FOR RETRIAL.

PLEASE GIVE DUE REGARD TO THIS BEING A PRO SE ACTION AND APPLY THE APPROPRIATE LAW RELEVANT TO THE ISSUES?

APPELLANT REQUESTS THIS HONORABLE COURT VACATE THIS CONVICTION AND REMAND TO THE LOWER COURT.

Bertram Brown
BERTRAM BROWN - 234970
990 WISACKY HWY.
BISHOPEVILLE, SC 29310

DATE: 12-9-19

STATE OF SOUTH CAROLINA
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APPELLANT CASE NO. 2018-001429

THE STATE)
 RESPONDENT)
 ✓)
BERTRAM MERLE BROWN)
 APPELLANT)

PROOF of Service

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I, BERTRAM BROWN, PLACED A PRO SE BRIEF IN THE ABOVE CAPTIONED CASE IN THE U.S. MAIL ON DECEMBER _____, 2019, ADDRESSED TO THE CLERK OF COURT, SC COURT OF APPEALS, P.O. Box 11629, Columbia, SC 29211, SUCH BEING AN ACCEPTABLE FORM OF SERVICE.

Bertram Brown
BERTRAM MERLE BROWN - 234970
990 WISACKY HWY
DISHOPEVILLE, SC 29010

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Clerk of Court
SC Court of Appeals
PO BOX 11629
Columbia, SC 29211

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RE: Appellant Case NO. 2018-001429
ANDERS PRO SE BRIEF

DEAR MS. KITCHINGS.

PLEASE FIND ENCLOSED FOR FILING IN YOUR OFFICE ONE ANDERS PRO
SE BRIEF AND 2 PROOF OF SERVICE IN THE ABOVE CAPTIONED CASE,
PLUS A COPY OF SAME TO BE CCKETAMPED AND RETURNED TO ME IN THE
ENCLOSED ENVELOPE.

Bertram Brown
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DISHOPEVILLE, SC 29310

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Bertram Brown - 234970
990 WISACKY HWY.
Bishopville, SC 29010

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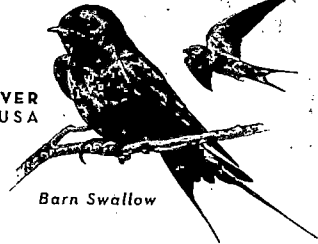


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