

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Honorable Kristi F. Curtis, Circuit Court Judge

SANDY LEE LOCKLEAR,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000864

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Was appellate counsel ineffective in failing to challenge on direct appeal the trial judge's refusal to direct a verdict of acquittal for murder?

STATEMENT

In January of 2013, the Horry County Grand Jury indicted Petitioner, Sandy Lee Locklear, for two counts of murder, indictments #2013-GS-26-302, 304. (App. pp. 1485-1488). The Honorable Benjamin H. Culbertson heard pre-trial motions May 23-30, 2014. Ralph Wilson, Jr. represented Petitioner. Brad Richardson and Monica Wooten prosecuted the case. The trial began on June 2, 2014. The jury returned verdicts of guilty on June 12, 2014, and Judge Culbertson sentenced Petitioner to two concurrent life sentences. (App. p. 1483, lines 9-14). A timely notice of intent to appeal was filed and the direct appeal perfected. Edwin Thompson Kinney represented Petitioner on direct appeal. Melody J. Brown represented the State. After hearing arguments on May 3, 2016, the South Carolina Court of Appeals affirmed the convictions. State v. Locklear, Op. No. 2016-UP-313 (S.C. Ct.App. filed June 22, 2016).

On January 12, 2017, Petitioner filed an application for post-conviction relief [PCR]. The State filed a return and partial motion to dismiss on December 15, 2017. On November 28, 2018, an evidentiary hearing was held before the Honorable Kristi F. Curtis. James K. Falk represented Petitioner. Johnny E. James represented the State. In a written order signed May 9, 2019, Judge Curtis denied relief and dismissed the application. (App. pp. 1535-1548). A timely notice of intent to appeal was served on May 19, 2019. This petition for writ of certiorari follows.

ARGUMENT

Appellate counsel was ineffective in failing to challenge on direct appeal the trial judge's refusal to direct a verdict of acquittal for murder.

The jury found Petitioner guilty of the fatal shooting of her husband, Amos Hatfield, and her step-son, Tommy Hatfield. At the close of the State's case Petitioner moved for a directed verdict of acquittal. (App. pp. 1058-1072). Counsel for Petitioner argued:

My concern in this case is is that you have no weapon. You have text messages which the State has not confirmed who the actual other people are who were receiving or sending those text messages. You actually have a case in this, in this situation where you have an insurance policy that they're trying to hang their hats on and say that, you know, this was the motive for this particular murder, and on top of that, Judge, there is no forensic evidence, none. In one of the cases, there was blood evidence. There is no forensic evidence which ties this Defendant to this crime, not one single piece, not anything, nothing, not an iota, and this Defendant is entitled, I think, Judge, to a directed verdict, not for just those reasons. The fact that they haven't produced anyone, no one says that they saw this Defendant shoot anybody. No one says that there's a conspiracy. There's been no talk of conspiracy. There's no evidence of it. I haven't seen the Co-Defendants testify about it. I haven't seen anyone who knows the Co-Defendants get up on the stand and testify about it. I haven't seen anything. All you have now is suspicion, and I would say it doesn't go beyond that, Judge, and, and the circumstantial evidence that the State is trying to put up to convict her it should never make it to the jury. It should never make it to the jury because they don't have enough evidence to convict this Defendant by law.

(App. p. 1062, line 21 – p. 1063, lines 1-20). The trial judge denied the motion for a directed verdict. (App. p. 1072, lines 19-23).

The State's theory of the case was that Petitioner collaborated with Nehemia James Evans and Odom Bryan Bryant to kill her husband for insurance money. (App. p. 1068, lines 2-5). The State admitted that there was no proof as to who fired the fatal shots but was proceeding under the theory of the hand of one is the hand of all. (App. p. 1070, lines 1-4). Petitioner was present in the home when the two men were shot, she called 911 and initially told the police that she was the victim of a crime. (App. p. 520, line 18 – p. 521, lines 1-10).

At trial a former detective with the Horry County Police Department testified that he interviewed Petitioner and questioned her about some text messages found on her phone prior to the shooting. (App. p. 535, line 24 – p. 536, lines 1-4). A text message from Petitioner’s phone sends a message to someone that the back door is open. (App. p. 535, line 24 – p. 536, lines 1-4). According to the detective, after being shown the text messages Petitioner stated, “They were just supposed to rob them.” (App. p. 536, lines 5-6). The detective testified that Petitioner identified James, the person who cuts her grass. (App. p. 536, lines 7-11). The detective later identified James as Nehemiah James Evans. The detective also testified that during the interview he learned that Odom Bryan Bryant was the second suspect. (App. p. 556, lines 21-25). Evans, Bryant and Petitioner were all charged with the murders. Neither Evans nor Bryant gave statements implicating Petitioner in the murders and neither testified against Petitioner at trial.

Petitioner’s first cousin, Faye Hunt, contacted the police to clear her name. (App. p. 831, lines 16-21). According to Hunt, the summer prior to the shooting Petitioner commented on an insurance policy stating, “That son of a bitch died today I’d be a rich bitch tomorrow.” (App. p. 833, lines 3-4). When the police searched Petitioner’s house they found a life insurance policy for Amos Hatfield listing Petitioner as one of two beneficiaries. (App. pp. 879-885). Hunt also told the police that Petitioner had a small caliber pistol. (App. p. 834, line 22 – p. 835, lines 1-15). The gun used in the shootings was a small caliber gun. (App. p. 1042, lines 18-24). The gun used in the shootings, however, was not recovered. (App. p. 561, lines 5-8).

On appeal Petitioner raised three issues: 1.) The trial judge erred in ruling that Petitioner was not in custody prior to being read her Miranda rights and in allowing the pre-Miranda statement to be admitted in evidence; 2.) The trial judge erred in ruling that the State did not violate the rule set forth in Missouri v. Seibert; and 3.) The trial judge erred in finding that the

search warrant for the home was supported by probable cause. State v. Locklear, Op. No. 2016-UP-313 (S.C. Ct.App. filed June 22, 2016). The South Carolina Court of Appeals affirmed in an unpublished opinion after hearing arguments.

In the PCR application Petitioner alleged ineffective assistance of appellate counsel. (App. p. 1493). In closing PCR counsel argued that appellate counsel was ineffective for failing to raise the directed verdict issue on appeal. (App. p. 1532, lines 1-13). In the order of dismissal the PCR judge wrote:

In order for Applicant to prevail on this issue, she has the burden of showing the denied directed verdict issue was clearly stronger than the issues Appellate counsel did present, and that the Court of Appeals would have reversed her conviction, but for Appellate Counsel's failure to raise this issue. It is undisputed that this case was tried primarily on circumstantial evidence implicating Applicant in the double homicide. However, the trial court correctly denied Applicant's motion for a directed verdict based, not on the *weight* of the evidence presented by the State, but on the existence of evidence from which a reasonable juror could find Applicant guilty beyond a reasonable doubt. Appellate counsel was not unreasonable for failing to raise this issue in light of the other nonfrivolous issues presented on direct appeal, and Applicant was not prejudiced by Appellate Counsel's decision not to raise this issue as a matter of sound professional judgment. Therefore, Applicant's claim of ineffective assistance of Appellate Counsel by way of allegation 2.a and 2.b is DENIED and DISMISSED.

(App. p. 1543). The PCR judge erred.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687-88, 104 S.Ct. 2052. "Under this prong, '[t]he proper measure of attorney performance remains simply reasonableness under

prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id.

In Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009) (n. #6 omitted), the South Carolina Supreme Court wrote:

A criminal defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 398, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). However, counsel is not required to raise every non-frivolous claim, but may select among them in order to maximize the likelihood of a favorable outcome. Smith v. Robbins, 528 U.S. 259, 288, 120 S.Ct. 746, 145 L.Ed.2d 756 (2000).

Generally, in analyzing a claim of ineffective assistance of appellate counsel, this Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. See Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). Thus, in this case, we ask 1) whether appellate counsel's performance was deficient, and 2) whether Respondent was prejudiced by appellate counsel's deficient performance.

Appellate counsel was ineffective in failing to challenge on direct appeal the trial judge's refusal to direct a verdict of acquittal for murder. In State v. Meador, 425 S.C. 625, 653–54, 825 S.E.2d 53, 68–69 (Ct. App. 2019), the South Carolina Court of Appeals wrote:

“When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight.” State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). When reviewing a trial court's denial of a defendant's motion for a directed verdict, an appellate court must view the evidence in the light most favorable to the State. State v. Venters, 300 S.C. 260, 264, 387 S.E.2d 270, 272 (1990). Additionally, an appellate court must find a case was properly submitted to the jury “if any direct evidence or any substantial circumstantial evidence reasonably tends to prove the guilt of the accused.” Weston, 367 S.C. at 292-93, 625 S.E.2d at 648. The trial court should submit a case “to the jury when the evidence is circumstantial ‘if there is any substantial

evidence [that] 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)). “[T]he trial court should grant a [defendant's] directed verdict motion when the evidence presented merely raises a suspicion of guilt.” *Id.* at 142, 708 S.E.2d at 778. “Circumstantial evidence ... gains its strength from its combination with other evidence, and all the circumstantial evidence presented in a case must be considered together to determine whether it is sufficient to submit to the jury.” State v. Rogers, 405 S.C. 554, 567, 748 S.E.2d 265, 272 (Ct. App. 2013). “[W]hen the State relies exclusively on circumstantial evidence and a motion for a directed verdict is made, the trial [court] is concerned with the existence or non-existence of evidence, not with its weight.” State v. Pearson, 415 S.C. 463, 469, 783 S.E.2d 802, 805 (2016).

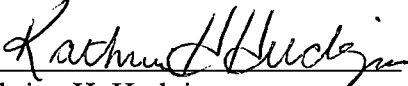
“[T]he lens through which a court considers circumstantial evidence when ruling on a directed verdict motion is distinct from the analysis performed by the jury.” State v. Bennett, 415 S.C. 232, 236, 781 S.E.2d 352, 354 (2016). During the *jury's* review, “every circumstance relied upon by the [S]tate [must] be proven beyond a reasonable doubt[] and ... all of the circumstances so proven [must] be consistent with each other and, taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis.” *Id.* (quoting State v. Littlejohn, 228 S.C. 324, 328, 89 S.E.2d 924, 926 (1955)). During the consideration of a directed verdict motion, the *trial court* must view the evidence in the light most favorable to the State and submit the case to the jury if any substantial evidence “reasonably tends to prove the guilt of the accused” or if any substantial evidence exists “from which his guilt may be fairly and logically deduced.” *Id.* at 236-37, 781 S.E.2d at 354 (emphasis added) (quoting Littlejohn, 228 S.C. at 329, 89 S.E.2d at 926). “Therefore, although the *jury* must consider alternative hypotheses, the *court* must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt. This objective test is founded upon reasonableness.” *Id.* at 237, 781 S.E.2d at 354. “Accordingly, in ruling on a directed verdict motion whe[n] the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt.” *Id.*

Viewing the evidence in the light most favorable to the State, the evidence merely raises a suspicion of guilt and the trial judge erred in refusing to direct a verdict of acquittal. The State failed to present substantial circumstantial evidence from which the jury could fairly and logically deduce guilt. Appellate counsel was ineffective in failing to challenge on direct

appeal the trial judge's refusal to direct a verdict of acquittal for murder. Petitioner was prejudiced by the deficient performance.

CONCLUSION

Based on the above argument this Court should grant the petition for writ of certiorari to allow further briefing on the issue.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of December, 2019.

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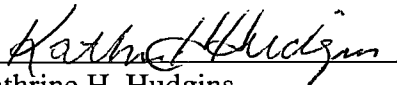
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Sandy Lee Locklear states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
 2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge Kristi F. Curtis, which was held on November 27, 2018, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
 3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.
- Therefore, counsel requests that the Court relieve her as counsel for Sandy Lee Locklear.

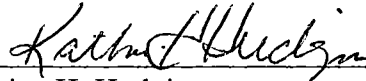
Respectfully Submitted,


Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR PETITIONER

This 23rd day of December, 2019.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her ability this Johnson Petition for Writ of Certiorari 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."



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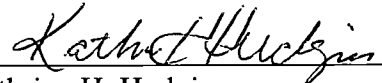
V.

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RESPONDENT


CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Johnny Ellis James, Jr., Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Sandy Lee Locklear, #360304, at Graham Correctional Institution, 4450 Broad River Road, Columbia, SC 29210, this 23rd day of December, 2019.



Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 23rd day of December, 2019.

 (L.S)

Notary Public for South Carolina
My Commission Expires: September 30, 2029