STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Honorable Daniel D. Hall, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARIO CHANEL MOISE,

APPELLANT

APPELLATE CASE NO 2019-001172

ANDERS BRIEF OF APPELLANT

JESSICA M. SAXON
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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in denying Appellant's motion for a directed verdict where the state failed to prove that Appellant was required to register as a sex offender because the state did not offer direct or substantial circumstantial evidence that showed Appellant had established a residence in South Carolina, as required by the sex offender registry statute?

STATEMENT OF THE CASE

Appellant was indicted during the October 2018 term of the York County grand jury for one count of Failure to Register, third or subsequent offense. R. 113-114. During the June 2019 term of the York County grand jury Appellant was indicted for a second count of Failure to Register, third or subsequent offense. R. 111-112. The state represented by Erin. M. Joyner, called the case to trial before the Honorable Daniel D. Hall on July 9, 2019. R. 1. Appellant was represented by Jessica M. Russo. R. 1.

Both Appellant and the state agreed to a bench trial. R. 5-6. Judge Hall found Appellant guilty as charged. R. 101-102. Appellant was sentenced to two terms of imprisonment of five years, to run concurrent to one another. 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 court erred in denying Appellant's motion for a directed verdict where the state failed to prove that Appellant was required to register as a sex offender because the state did not offer direct or substantial circumstantial evidence that showed Appellant had established a residence in South Carolina, as required by the sex offender registry statute.

Relevant Facts

Appellant was adjudicated delinquent in the York County Family Court for Criminal Sexual Conduct with a Minor, first degree, on November 27, 1995. R. 11, ll. 11-14. He was thirteen years old at the time of the Family Court adjudication. R. 82, ll. 5-7. Appellant was released from DJJ and began registering in 1998 when he was sixteen years old. R. 82, ll. 18-12.

Prior to his arrest Appellant had been living in the state of Florida. R. 86, ll. 12-16. He had previously been living in Greenville County, South Carolina, and registered with the appropriate authorities in Greenville that he was leaving the state. R. 87, ll. 1-5. Upon arriving in Florida, Appellant went to the local authorities to register as a convicted sex offender. R. 87, ll. 7-14. Florida officials informed Appellant that he was no longer on the sex offender registry and was not required to continue registering. R. 87, ll. 12-25. Importantly, under Florida law, Appellant was not required to register in that state as he was under the age of fourteen when he was adjudicated delinquent on the underlying sexual offense.[1]

In July 2018, the York County Sheriff's Office received an anonymous email tip through SLED that Appellant was residing in York County and working at a Buffalo Wild Wings. R. 21,

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1 Florida Statute Ann. § 943.0435(1)(h)d "Sexual offender" means a person who on or after July 1, 2007, has been adjudicated delinquent for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction when the juvenile was 14 years of age or older at the time of the offense.

l. 21-R. 22, l. 5. Detective Mark Motz investigated the tip and discovered that Appellant was working at Buffalo Wild Wings in York County. R. 23. Records from Buffalo Wild Wings showed that Appellant was hired on March 2, 2018. R. 33, ll. 2-3. Timecards used at trial showed Appellant working from June through October of 2018. R. 34, ll. 5-23.

Appellant was arrested at Buffalo Wild Wings on July 25, 2018. R. 23, l. 16-R. 24, l. 5. Following his release, Appellant did not register with the York County Sheriff's Office. R. 58, ll. 11-22. This led to a second arrest warrant being served on Appellant on September 27, 2018. R. 59, ll. 7-20. Appellant was arrested at an apartment within York County where he was believed to be residing during 2018. R. 43, ll. 2-4.

At the close of the state's case defense counsel made a motion for a directed verdict. Defense counsel argued that the state was required to prove that Appellant had returned to South Carolina and established a residence in the state to require him to register. Counsel stated that Appellant merely working in South Carolina was not sufficient to require him to register as a sex offender in this state. Counsel argued that the statute requires individuals who move into the state of South Carolina to register within three days of establishing residency. Since the state had not been able to show that Appellant was living in South Carolina prior to his arrest the court should direct a verdict of acquittal. R. 74, l. 11-R.75, l. 10.

The state argued that the statute provided that an offender must register with the sheriff of each county in which he resides, owns real property, is employed, or attends school. Thus, the state was not required to show Appellant had established residency because the statute expressly provided for registration of a sex offender even if the individual only worked in South Carolina. R. 75, ll. 12-17. Further, the state argued it had produced evidence that Appellant was living in South Carolina prior to his arrest because he used a local address on his bond form and indigency

application. R. 76, ll. 11-23. The court denied defense counsel's motion for a direct verdict finding sufficient evidence for the case to go forward. R. 77, l. 22-R. 78, l. 3.

Appellant took the stand in his own defense. He testified that he did not think he had to register when he returned to South Carolina based on what Florida officials had told him. He further testified that he was confused after his first arrest which is why he did not register upon his release. R. 81-100. At the close of all evidence defense counsel again moved for a direct verdict. The court denied the motion a second time. R. 101, ll. 3-9.

Discussion

"The cardinal rule of statutory construction is to ascertain and effectuate legislative intent." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). As such, a court must abide by the plain meaning of the words of a statute. Id. When interpreting the plain meaning of a statute, courts should not resort to subtle or forced construction to limit or expand the statute's operation. Grazia v. S.C. State Plastering, LLC, 390 S.C. 562, 569, 703 S.E.2d 197, 200 (2010). "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Hodges, 341 S.C. at 85, 533 S.E.2d at 581. "'What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.'" Id. (quoting Norman J. Singer, Sutherland Statutory Construction § 46.03 at 94 (5th ed.1992)).

The South Carolina legislature passed the Sex Offender Accountability and Protection of Minors Act of 2006 (the Act) creating a statewide sex offender registry. See S.C. Code Ann. § 23-3-400 et. seq. In S.C. Code Ann. § 23-3-400 the legislature defined the intent and purpose of the Act stating that while the intent of the act was to "promote the state's fundamental right to

provide for the public health, welfare, and safety of its citizens," the registry was also to be used as an investigative tool by law enforcement to collect and keep information on convicted offenders "who *live within the law enforcement agency's jurisdiction.*" S.C. Code Ann. § 23-3-400 (emphasis added). The legislature next defined who would have to register as a sex offender. Pursuant to S.C. Code Ann. § 23-3-340 "any person, regardless of age, *residing in the State of South Carolina*" who has been convicted of specific enumerated offenses must register as a sex offender[2]. The legislature then clarified that, as used in the Act, an "offender" is a person who has been convicted of, pled guilty or nolo contendere to, or been adjudicated delinquent for any of the enumerated offenses. S.C. Code Ann. § 23-3-340(C).

It is clear from the plain language used in the statute that the intent of the legislature was to require that individuals who have been convicted of qualifying offenses that *reside within the State of South Carolina* register with their local sheriff. The Act states, multiple times, that the action which triggers an offender's registration on the South Carolina sex offender registry is residing within the state of South Carolina.

The state relied on S.C. Code Ann. § 23-3-450 which states in relevant part that "[t]he offender shall register with the sheriff of each county in which he resides, owns real property, is employed, or attends, is enrolled, volunteers, interns, or carries on a vocation at any…school." It argued that this portion of the statute meant that simply working within South Carolina was enough to trigger the requirement of registration and therefore it did not need to prove residency. This argument ignored the intent of the Act and disregarded the specific and clear definitions provided by the legislature. Based on the definitions used by the legislature, an offender, as used

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2 S.C. Code Ann. § 23-3-340(B) defines a resident as "a person who remains in this State for a total of thirty days during a twelve-month period."

in S.C. Code. Ann. § 23-3-450, is an individual, convicted of one of the enumerated offenses, who resides in the State of South Carolina.

The state also argued that the bond form and application of indigency that Appellant completed after his first arrest were proof of residency within South Carolina. This paperwork listed an apartment in York County with a monthly rent of $600. R. 76, ll. 11-20. The property manager of this apartment, Cecil Trader, was called to testify at trial. Trader testified that the rent for the apartment was $600 a month, that a woman named Amy Scott and her husband rented the apartment, and that the couple was in the apartment for three to four months before being asked to leave. Trader also testified that he did not regularly see the husband who lived in the apartment and would not be able to recognize him as he only met him once. R. 45-49.

However, no evidence was produced to show that Appellant lived in that apartment, or anywhere else in South Carolina, for the requisite thirty days to establish residency in South Carolina. See S.C. Code Ann. § 23-3-340(B). The evidence produced by the state merely raised a suspicion that Appellant lived at the apartment or stayed there sporadically. "The circuit court should not refuse to grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. Suspicion implies a belief or opinion as to guilt based upon facts or circumstance which do not amount to proof." State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004).

At Appellant's bench trial the state was only able to produce evidence that created a suspicion that Appellant was residing in South Carolina. While the state was able to prove that Appellant was working in South Carolina, they were unable to prove that he resided in this state. As such, the state failed to prove the crucial element and triggering requirement of the state sex offender registry, residency. The trial court erred when it did not grant a directed verdict of

acquittal. See State v. Bostick 392 S.C. 134, 708 S.E.2d 774 (2001) (citing State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004) in holding that the trial court erred in failing to direct a verdict in favor of the defendant where the evidence only raised a suspicion of guilty).

CONCLUSION

Based on the foregoing, this Court should issue an order of acquittal on all counts.

s/Jessica M. Saxon_____
Jessica M. Saxon
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of April, 2020.

STATE OF SOUTH CAROLINA

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Mario Chanel Moise states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. She has reviewed the record of appellant's trial before Judge Daniel D. Hall, which was held on July 9, 2019, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. She 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, She asks the Court to relieve her as counsel for Mario Chanel Moise.

Respectfully Submitted,

s/Jessica M. Saxon
Jessica M. Saxon
Appellate Defender
ATTORNEY FOR APPELLANT

This 13th day of April, 2020.

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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 Trial held July 9, 2019.

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

April 13, 2020

s/Jessica M. Saxon
Jessica M. Saxon
Appellate Defender

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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."

April 13, 2020.

s/Jessica M. Saxon
Jessica M. Saxon
Appellate Defender

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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, Jr., Esquire, via electronic mail at the primary email address listed in the Attorney Information System (AIS); and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Mario Chanel Moise, 306937, at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512, this 13th day of April, 2020.

s/Jessica M. Saxon
Jessica M. Saxon
Appellate Defender
ATTORNEY FOR APPELLANT