

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Georgetown County

Honorable Larry B. Hyman, Circuit Court Judge

RECEIVED

Jun 25 2020

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DONNEL LAMONT WASHINGTON,

APPELLANT

APPELLATE CASE NO 2019-001043

ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
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South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to direct a verdict of acquittal for burglary first degree when the State failed to present substantial circumstantial evidence that Appellant entered the home?

STATEMENT OF THE CASE

In July of 2017, the Georgetown County Grand Jury indicted Appellant, Donnel Lamont Washington, for burglary first degree, indictment #2017-GS-22-00802.¹ Appellant was additionally indicted for criminal domestic violence of a high and aggravated nature, criminal domestic violence first degree, discharging a firearm into a dwelling and obstruction of justice. On June 17, 2019, Appellant proceeded to jury trial before the Honorable Larry B. Hyman. Madison Harte represented Appellant at trial. Richard Todd prosecuted the case. Judge Hyman directed a verdict of acquittal for the obstruction of justice charge. The jury found Appellant guilty of burglary first degree but not guilty of all the other charges. Judge Hyman sentenced Appellant to life in prison suspended upon the service of eighteen (18) years. A timely notice of intent to appeal was served on June 20, 2019. This appeal follows.

¹ It is unclear who testified before the Grand Jury because the witness is listed as the Georgetown Police Department.

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. Cherry, 361 S.C. at 594, 606 S.E.2d at 478. 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) (emphasis added).

“On appeal from the denial of a directed verdict, this 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). State v. Pearson, 415 S.C. 463, 469–70, 783 S.E.2d 802, 805–06 (2016).

ARGUMENT

The trial judge erred in refusing to direct a verdict of acquittal for burglary first degree when the State failed to present substantial circumstantial evidence that Appellant entered the home.

The jury found Appellant guilty of burglary first degree for breaking into the home where Cheryl Gadson, the mother of Appellant's daughter, lived. The home was rented by Appellant's mother for Gadson in an effort to allow Gadson to regain custody of Appellant's daughter and her other three daughters after the children were removed by the Department of Social Services [DSS] based on allegations of neglect. (R. p. 138, line 20 – p. 139, 140, 141, 142, lines 1-12; p. 153, lines 7-22). The morning before Appellant was arrested Gadson sent Appellant the following text message, "I'm looking to fuck shit up better stay clear cause it's coming." (R. p. 155, lines 12-13). Gadson admitted that she was angry after learning that Appellant was having a relationship with another woman. (R. p. 155, lines 14-21).

Officer Ryan Call with the City of Georgetown Police Department testified that he responded to an anonymous call of shots fired at 2:00 AM on April 9, 2017. (R. p. 69, lines 13-24). Officer Call found a holster in the roadway and a projectile in the front door of a trailer belonging to Bobby Sykes. (R. p. 70, line 7 – p. 71, lines 1-12). Sykes and Gadson were both in the trailer and came out to speak with the officer. (R. p. 72, lines 19-25).

Gadson testified that on the evening of April 8, 2017, she had dinner with Sykes and had returned to his house when Appellant showed up. (R. p. 143, line 3 – p. 144, lines 1-4). Gadson testified that there was a confrontation between Appellant and Sykes and shots were fired. (R. p. 144, lines 4-11). Neither Sykes nor Gadson called the police. (R. p. 144, lines 12-17). According to Gadson, Appellant later returned and shot into the trailer. (R. p. 144, line 18 – p.

145, lines 1-5). The police arrived and they eventually went with Gadson back to her home. (R. p. 147, line 4 – p. 148, lines 1-19). The officers and Gadson discovered that the home had been broken into and items inside the house destroyed. (R. p. 147, line 14 – p. 148, lines 1-19). The State presented evidence of threatening text messages sent from Appellant to Gadson in the early morning hours of April 9, 2017. (R. p. 146, line 15 – p. 147, lines 1-13; p. 189, lines 1-25). The jury, however, found Appellant not guilty of the domestic violence and discharging a firearm charges. After a stand-off with police, Appellant was arrested at the Bay View Motel where he had been living. (R. p. 92, line 16 – p. 93, 94, lines 1-23).

Patricia Shubrick, Gadson's next door neighbor, testified that on April 9, 2017, at around 2:00 AM she saw Appellant banging on the back door of Gadson's house. (R. p. 104, line 24 – p. 105, 106, 107, 108, lines 1-22). Shubrick testified, "That night it was early in the morning and I heard a lot of banging and it woke me up and I went downstairs, and I looked out my window and I saw a young man beating on the back door. He walked around to the front of the house, he came back, he got in his car and he left." (R. p. 105, lines 8-12).

Investigator Allen Morris testified that when he interviewed Appellant and obtained his cell phone he noticed that the back plate covering the battery was missing. (R. p. 170, lines 6-18). The investigator claimed to have found the back plate to the phone inside Gadson's home. (R. p. 174, line 11 – p. 175, lines 1-6). The investigator testified, "Yes. It was on the floor. We actually about stepped on in on the way out and we picked it up right before we stepped on it." (R. p. 175, lines 4-6). On cross-examination the investigator was forced to admit that he was mistaken and that Gadson had provided him with the back plate a few days later on April 12, 2017. (R. p. 194, lines 17-22).

At the close of the State's case Appellant moved for a directed verdict of acquittal for burglary first degree based on the fact that there was no evidence placing Appellant inside the house. (R. p. 203, line 23 – p. 204, lines 1-3). The judge denied the directed verdict motion. (R. p. 206, lines 13-19). The trial judge erred.

In State v. Prather, 429 S.C. 583, 608, 840 S.E.2d 551, 564 (2020), the South Carolina Supreme Court 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. Hernandez, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009). “In an appeal from the denial of a directed verdict motion, the appellate court must view the evidence in the light most favorable to the State.” State v. Cope, 405 S.C. 317, 348, 748 S.E.2d 194, 210 (2013). We must affirm the trial court's decision to submit the case to the jury if there is any direct or substantial circumstantial evidence reasonably tending to prove the defendant's guilt. Id. However, we must reverse if the evidence only gives rise to a mere suspicion of the defendant's guilt. See Hernandez, 382 S.C. at 625, 677 S.E.2d at 605. “ ‘Suspicion’ implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof.” State v. Buckmon, 347 S.C. 316, 322, 555 S.E.2d 402, 404-05 (2001).

In State v. Gilliland, 402 S.C. 389, 397, 741 S.E.2d 521, 526 (Ct. App. 2012), the South Carolina Court of Appeals wrote, “A person is guilty of first-degree burglary if he “enters a dwelling without consent and with intent to commit a crime in the dwelling” and either enters or remains in the dwelling during the nighttime. S.C.Code Ann. § 16–11–311(A) (2003).” Viewing the evidence in the light most favorable to the State, the State failed to present any direct or substantial circumstantial evidence that Appellant entered the dwelling. The next door neighbor's testimony about seeing Appellant banging on the door and the back plate to the phone, turned over by Gadson, merely raise a suspicion of guilty. The trial judge erred in refusing to direct a verdict of acquittal.

CONCLUSION

Based on the above argument, this Court should reverse the conviction and sentence.

s/ Kathrine H. Hudgins

Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 25th day of June, 2020.

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Counsel for Donnel Lamont Washington 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 Larry B. Hyman, which was held on June 17 - 19, 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 Donnel Lamont Washington.

Respectfully Submitted,

s/ Kathrine H. Hudgins
Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

This 25th day of June, 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 and sentencing sheet;
- (2) Trial transcript pp 1-259;
- (3) State's Exhibit #1 – Miranda rights;
- (4) State's Exhibit #2 - CD of Defendant's interview – **TO BE TRANSPORTED TO THE COURT.**

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

June 25, 2020

s/ Kathrine H. Hudgins
Kathrine H. Hudgins
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.”

June 25, 2020.

s/ Kathrine H. Hudgins

Kathrine H. Hudgins
Appellate Defender

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