

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Calhoun County

Honorable Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

QUINTIN MILLS,

APPELLANT

APPELLATE CASE NO. 2019-000915

ANDERS BRIEF OF APPELLANT

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SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying appellant's motion for a directed verdict as to armed robbery where there was no direct evidence appellant was at the scene at the time of the incident and in fact there was video evidence shown at trial that proved appellant was at a convenience store at the time the incident occurred?

STATEMENT OF THE CASE

On March 16, 2018, a Calhoun County grand jury indicted appellant for armed robbery and murder. R. 471. Appellant's case was called to trial on May 21, 2019 before the Honorable Maite Murphy and a jury. R. 1. Andrew Farley represented appellant and Ted Lupton, assistant solicitor, represented the state. R. 1. On May 23, 2019, the jury found appellant not guilty of murder but guilty of armed robbery. R. 451. Judge Murphy sentenced appellant to twenty years' imprisonment. R. 457.

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 as to armed robbery where there was no direct evidence appellant was at the scene at the time of the incident and in fact there was video evidence shown at trial that proved appellant was at a convenience store at the time the incident occurred.

Relevant facts

According to the state's witnesses at trial, appellant and acquaintance, Jarvis Mack, arranged for appellant to sell a motorcycle to Mack's friend, Charles Brown. R. 198, ll. 9-14; 200, ll. 5-22. Throughout the day appellant and Mack communicated regarding where they would meet to complete the sale. At some point it was decided they would meet at an abandoned house in a neighborhood familiar to both parties. Mack, Brown, and their friend, Kendrell Thompson, went to the location to meet appellant. R. 202, l. 11-203, l. 20; 205, l. 10-11; 207, l. 15-208, l. 14.

Thompson and Mack claimed that when they arrived at the location appellant and his father, Derrick Mills, were waiting for them. R. 209, ll. 14-25. According to Thompson and Mack there was a disagreement about the motorcycle Brown agreed to purchase and the one appellant and his father brought to the sale. R. 210, ll. 7-21; 139, ll. 11-23. Ultimately, Brown was shot and killed. Thompson also alleged appellant and his father took items from him including cash and cellphones. R. 170, 7-15.

At approximately 6:41 p.m. Mack called 911 and told the emergency operator appellant and his father were the persons involved in shooting Brown. R. 76, ll. 22-24; 256, ll. 1-24. However, a video recording showed appellant and his father at a convenience store at the time of the shooting. R. 76, ll. 9-22.

Appellant and his father were tried jointly. R. 1. The state's theory of the case was that appellant and his father never intended to sell a motorcycle to Brown, rather they intended to lure Brown to a secluded location to rob him at gunpoint.

At beginning of trial, the court took judicial notice that sunset was at 5:16 p.m. on December 13, 2014, the day of the incident. The state contended the time stamp on the convenience store video, which displayed the time as 6:00 p.m. until 6:30 p.m., was incorrect because in the video it appeared light outside. The state argued it would have been dark outside by 6:30 p.m. R. 79, l. 4-12; 83, ll. 3-10; 96, l. 5-97, l. 4; 340, l. 20-341, l. 8.

At trial, Mack testified that when he Brown and Thompson arrived at the location, they were surprised to see appellant's father. R. 199, ll. 17-25. Mack claimed the motorcycle appellant brought was not the model he and appellant discussed, and Brown and appellant's father argued. R. 210, ll. 7-21. As Mack, Brown, and Thompson tried to leave appellant's father pulled out a gun and pointed it in their car. R. 211, ll. 16-18. Mack saw an opportunity to run and he was several yards away when he heard gunshots. R. 212, ll. 11-14; 216, l. 14-217, l. 1. Mack could not recall whether he saw appellant with a gun that evening. R. 212, l. 15-213, l. 20. After he fled, Mack ran to a nearby home and called 911. R. 217, ll. 15-18; 218, ll. 2-7. Mack soon returned to the scene and discovered Brown's body, when police arrived Mack had blood on him. R. 327, ll. 5-13. Mack claimed he hugged and kissed Brown, whom he considered a father figure. R. 219, ll. 4-15. Neither Mack nor Thompson were investigated by police as potential suspects in the death of Brown. R. 327, ll. 13-24; 330, ll. 5-16.

Thompson testified that after the disagreement about the model of the motorcycle he, Mack, and Brown attempted to leave. When they got in their vehicle appellant's father pulled out a gun and pointed it Brown. R. 139, l. 11-141, l. 8. Simultaneously, appellant grabbed

Thompson and Mack ran away. Thompson alleged that appellant's father gave appellant a look that seemed to signal appellant to rob Thompson. Thompson said appellant took everything out of his pockets. R. 142, l. 12-143, l. 21. Thompson claimed he had a gun, two hundred dollars, and three cellphones in his pockets. R. 143, l. 23-144, l. 10; 170, 7-15. Thompson testified that appellant's father shot Brown multiple times and then they all went their separate way. R. 144, ll. 13-21. Thompson ran to his grandmother's home nearby and did not speak with police until a few days after the incident. R. 147, 1-2; 149, l. 24-150, l. 7.

At the close of the state's case counsel for appellant moved for a directed verdict arguing the state did not prove appellant was at the scene at the time of the incident and that fact was corroborated by the convenience store video evidence. R. 375, l. 21-376, l. 5. The trial judge denied the motion finding there was direct and circumstantial evidence tending to establish appellant's guilt and ruling the case should go to the jury. R. 377, ll. 2-8.

On May 23, 2019, after deliberations, the jury found appellant was not guilty of murder but was guilty of armed robbery. R. 451, ll. 19-25. Judge Murphy sentenced appellant to twenty years' imprisonment. R. 457, ll. 18-21.

Discussion

At trial, the state offered only Mack's and Thompson's questionable testimony that appellant was at the scene of the incident. Video from the convenience store introduced at trial directly contradicts their testimony and instead shows appellant could not have been at the scene.¹

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

¹ State's exhibit #17, the convenience store video, is on file with this Court.

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 the 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 men, 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.

Here, the trial court reversibly erred by denying appellant's motion for directed verdict as to armed robbery. While Thompson's and Mack's testimonies put appellant at the scene, video evidence showed appellant at a convenience store at the time of the incident. Other than Brown's friends' unreliable testimony there is no evidence that puts appellant at the scene. Other than Thompson's story there is no evidence showing appellant took anything from Thompson. Contrastingly, there was reliable video evidence that shows appellant at another location at the very time Brown was murdered and Thompson's belongings were allegedly taken. Thus, the evidence at trial does not reasonably tend to prove the guilt of appellant. *See State v. Mitchell*, 341 S.C. 134, 535 S.E.2d 126 (2000); *State v. Martin*, 340 S.C. 597, 533 S.E.2d 572 (2000); *State v. Lollis*, 343 S.C. 580, 541 S.E.2d 254 (2001); *State v. Bostick*, 392 S.C. 134, 141, 708

S.E.2d 774, 778 (2011); *State v. Odems*, 395 S.C 582, 720 S.E.2d 48 (2012).

CONCLUSION

By reason of the foregoing, appellant requests this Court reverse the trial court and grant his motion for a directed verdict.

s/ Sarah E. Shipe
Sarah E. Shipe
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of July, 2020.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Quintin Deasean Mills 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 Maite Murphy, which was held on May 21 - 23, 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 Quintin Deasean Mills.

Respectfully Submitted,

s/ Sarah E. Shipe
Sarah E. Shipe
Appellate Defender

This 27th day of July, 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;
- (2) Transcript of trial held May 21-23, 2019;
- (3) State's Exhibit #17 (El Cheapo Video)

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

July 27, 2020

s/ Sarah E. Shipe
Sarah E. Shipe
Appellate Defender

South Carolina Commission on Indigent
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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.”

July 27, 2020.

s/ Sarah E. Shipe
Sarah E. Shipe
Appellate Defender

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CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon William M. Blich, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 27th day of July, 2020; and a copy of the Anders Brief of Appellant and Designation of Matter has been served on Quintin Deasean Mills, #353310, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 27th day of July, 2020.

s/ Sarah E. Shipe
Sarah E. Shipe
Appellate Defender
ATTORNEY FOR APPELLANT