

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable G. Thomas Cooper, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TYRONE LORENZA ROBINSON,

APPELLANT

APPELLATE CASE NO. 2017-002233

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to grant appellant a directed verdict because the only evidence produced by the State showed that appellant fired in self-defense?

STATEMENT OF THE CASE

On October 18, 2012, a Beaufort County grand jury indicted appellant for murder. R. 1089 – 1090. On September 14, 2014, appellant was tried before the Honorable Thomas G. Cooper, Jr., and a jury. R. 1. Duffie Stone and Sean P. Thornton represented the State. R. 1. Arie Bax and Jessica Saxon represented appellant. R. 1. The jury convicted appellant. R. 1013, ll. 13 – 20. Judge Cooper sentenced appellant to life imprisonment. R. 1035, ll. 13 – 19. 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 refusing to grant appellant a directed verdict because the only evidence produced by the State showed that appellant fired in self-defense.

It was undisputed in this murder case that the decedent, an eight year old boy ("Minor"), was not the intended recipient of the bullet that killed him. It was also undisputed that Aaron Young, Sr. and Aaron Young, Jr. riddled appellant Tyrone Robinson's car with bullets and intended to kill him. Robinson gave a videotaped statement in which he described the Young's viciousness. State's Ex. 6. The events that led to the shooting began at the house of Aaron Young, Sr. and Aaron Young, Jr. R. 467, ll. 8 – 16. The Youngs ultimately chased appellant to another location and their actions resulted in the death of Minor. The trial judge erred in not directing a verdict because insufficient evidence disproving self-defense existed to send this case to the jury.

Jontu Singleton, Sr. came to the courthouse from the Beaufort County Jail to testify for the State. R. 464, ll. 17 – 19. He was incarcerated on charges that were unrelated to the shooting in this case. R. 464, ll. 20 – 22. On the day of the shooting, Singleton saw Robinson playing music at his car and Robinson offered him a beer. R. 465, ll. 3 – 16. Singleton and Robinson left to go to a convenience store and Singleton told him to stop by Aaron Young, Sr.'s house so Singleton could borrow money from him for cigarettes. R. 466, ll. 5 – 16.

When they arrived at the Youngs' house, Singleton got out of the car and began speaking with the Youngs and Ebony Campbell. R. 467, ll. 2 – 7. Singleton then heard the door slam and saw Robinson approaching Aaron Young, Jr. with a gun in his hand. R. 467, ll. 8 – 13. They began "tussling over the gun." R. 467, ll. 8 – 16. Aaron Young, Sr. also began "tussling" with Robinson over the gun and the gun went off. R. 467, ll. 8 – 18. Aaron Young, Sr. backed away

and Robinson shot again into the ground. R. 467, ll. 14 – 23. Robinson told Singleton they should get in the car and leave, but Singleton declined. R. 467, l. 19 – 333, l. 3. Robinson got in his car and left. R. 468, ll. 4 – 8.

The Youngs went into the house and returned with a bookbag. R. 468, ll. 9 – 13. The three of them got into the Youngs' truck and drove around looking for Robinson. R. 468, l. 14 – 474, l. 18. Aaron Young, Jr. pulled a gun out of the bag. R. 470, ll. 5 – 25. The gun had a large clip and something that looked like a muffler. R. 471, ll. 7 – 23. The men were unable to find Robinson and returned to the Youngs' house. R. 473, l. 17 – 474, l. 18.

Singleton got out of the truck, but the Youngs again left in their truck. R. 474, ll. 9 – 18. Singleton believed that the gun was still in the truck when the Youngs left. R. 484, ll. 9 – 19.

Ebony Campbell's testimony differed from Singleton's. Aaron Young, Sr. was Campbell's boyfriend. R. 441, ll. 2 – 9. She was at home a little bit before 4:00 PM and the Youngs were about to go to work. R. 441, l. 10 – 443, l. 5. As they were about to leave, Robinson drove into the driveway and Singleton jumped out of the car. R. 443, ll. 1 – 5. Singleton asked Aaron Young, Sr. for two dollars so he could buy beer. R. 443, l. 18 – 444, l. 4.

Campbell claimed that Robinson then jumped out of the car and "started screaming obscenities at us." R. 444, ll. 5 – 8. The obscenities were directed at Aaron Young, Jr. R. 444, ll. 19 – 21. Campbell told Robinson to leave and they argued. R. 445, ll. 1 – 12. Robinson then pointed a gun at Aaron Young, Jr. R. 445, ll. 10 – 15.

Aaron Young, Sr. wrestled with Robinson. R. 446, ll. 16 – 25. Aaron Young, Sr. tried to knock the gun out of Robinson's hand and the gun went off. R. 447, ll. 1 – 6. The shot went into the wall of Campbell's neighbors' house. R. 447, ll. 9 – 12. Campbell and Aaron Young, Jr. ran away while Robinson continued to shoot. R. 447, ll. 13 – 21.

Campbell claimed that no one else had guns other than Robinson. R. 448, ll. 5 – 7. The Youngs and Campbell went back in the house. R. 448, ll. 17 – 24. Aaron Young, Sr. then went back outside. R. 448, ll. 21 – 24. Aaron Young, Jr. also went back outside right after his father. R. 449, ll. 2 – 4. Robinson's car was stuck on a piece of concrete in the yard and when Robinson's car finally broke away, he left. R. 449, ll. 5 – 17.

Robinson left Singleton at the Youngs' house. R. 449, l. 18 – 450, l. 22. The Youngs and Singleton then left in the Youngs' truck together. R. 450, ll. 8 – 25. At some point later, Singleton came back to the Youngs' house on foot. R. 451, ll. 11 – 13. The Youngs returned later. R. 451, ll. 14 – 16. Campbell denied that the Youngs were carrying anything when they left. R. 461, l. 16 – 463, l. 14.

On his way home from work, about five or six miles from home, Tyrone Delaney was almost hit head-on at a high rate of speed by the Youngs in their truck. R. 354, ll. 7 – 15. R. 352, ll. 18 – 21. When Delaney got home, Robinson was in his yard. R. 351, l. 25 – 352, l. 5. Robinson was on the phone. R. 352, ll. 14 – 15. Robinson asked Delaney if he saw a grey truck as Delaney was driving home and Delaney told Robinson about the near miss. R. 352, ll. 18 – 21. Delaney described Robinson as waving a black .38 revolver in the air and saying, "them motherfuckers was just shooting at me. They don't know who they messing with, so I shot back at them." R. 355, ll. 3 – 20.

Delaney went back to his house and told Charlese Mitchell, Robinson's first cousin, that Robinson had to leave. R. 356, ll. 10 – 12. R. 325, ll. 13 – 14. Mitchell went outside to tell Robinson to leave and about five to ten minutes later, Delaney heard rapid gunfire. R. 358, ll. 11 – 23. He then heard three more shots. R. 359, ll. 4 – 8.

At approximately 4:00 PM, Mitchell heard rapid gunshots outside. R. 324, ll. 13 – 18. About fifteen minutes after the first set of shots, Robinson knocked on Mitchell's front door. R. 325, ll. 8 – 12. Robinson asked if Patrick Young was home. R. 326, ll. 1 – 7. He then asked to use the phone. R. 326, ll. 6 – 12. Robinson had on no shirt, red shorts, and a “black handle” sticking out of his shorts. R. 326, ll. 13 – 18. Mitchell said it looked exactly like a handgun. R. 330, ll. 1 – 4. Mitchell heard Robinson say on the phone that people were shooting at him. R. 330, ll. 16 – 22.

Mitchell told Robinson to leave. R. 331, ll. 6 – 15. After Robinson left, several children went outside to play. R. 331, l. 24 – 332, l. 8. While the children were playing on the trampoline, Mitchell heard more gunshots. R. 332, ll. 1 – 8. Mitchell saw a grey truck turn on Marshland Road and the last vehicle she saw was Robinson's after the last shots were fired. R. 333, l. 24 – 334, l. 14. She described the last shot she heard as much slower than the initial volley. R. 334, ll. 13 – 17. Mitchell saw Aaron Young, Sr., driving the grey truck. R. 336, ll. 10 – 16. Mitchell said the windows on the gray truck were rolled up when she heard the last three shots fired. R. 337, ll. 1 – 11.

In all, Mitchell heard three sets of gunshots. R. 338, ll. 11 – 15. The first set of shots were rapid sequence. R. 338, ll. 11 – 18. Mitchell heard the shots before she ever saw Robinson. R. 338, ll. 11 – 15. After Robinson left, she heard another set of rapidly fired gunshots. R. 338, ll. 16 – 18. She estimated the time elapsed between the first set of rapid shots and the second set of rapid shots was ten to fifteen minutes. R. 338, ll. 19 – 24. The third set of shots were slow and distinct. R. 342, ll. 17 – 22. Mitchell saw the grey truck after she heard the last set of three shots. R. 348, ll. 3 – 10.

Mitchell heard screaming outside and went to her front door. R. 345, ll. 3 – 13. She saw Brittany Brinson giving medical attention to Minor and Mitchell called 911. R. 345, ll. 3 – 17. Minor died from a gunshot wound to the left chest. R. 579, l. 23 – 580, l. 2. The bullet entered Minor's chest at a slightly upward trajectory. R. 582, ll. 6 – 10.

Brinson was sitting in her den when she heard what she thought were fireworks. R. 378, ll. 6 – 23. She looked out the door and saw a man wearing red shorts with two beer bottles in his hand. R. 378, l. 24 – 379, l. 3. She then saw Minor running with another child, JS. R. 379, l. 22 – 380, l. 4. R. 384, ll. 2 – 4. Minor stopped and fell. R. 381, ll. 5 – 6. JS kept running. R. 380, ll. 5 – 8. Brinson asked him what happened and, over appellant's hearsay objection, JS "pointed at the guy in the red shorts and said he did it." R. 380, ll. 3 – 8.

Brinson heard two sets of shots. R. 388, ll. 15 – 25. She said the shots ended with a pause "and then about two more shots." R. 384, ll. 8 – 12. Brinson said only seconds elapsed between the shots. R. 388, ll. 15 – 25. Right after Brinson heard the shots, she heard a car "squealing off." R. 389, ll. 10 – 21.

Dominique Griffin was watching television when he heard "numerous gunshots." R. 393, ll. 5 – 7. Griffin said the gunshots sounded like "a machine gun". R. 393, ll. 8 – 11. Griffin ran out the back door to check on JS. R. 393, ll. 17 – 23. JS was crying and ran up to Griffin pointing. R. 394, ll. 5 – 9. Robinson walked behind him and, again over appellant's hearsay objection, JS pointed at Robinson and said "he shot [Minor]." Robinson got into his car and as he left, the glass fell in as a result of the Youngs riddling it with bullets. R. 396, l. 20 – 397, l. 6. Griffin did not see Robinson holding anything. R. 400, ll. 8 – 16.

The police investigation confirmed that Robinson's car had been shot multiple times by the Youngs' gun. R. 419, ll. 7 – 24. R. 503, l. 19 – 504, l. 15. The police impounded

Robinson's car and recovered five projectiles from it. R. 540, l. 12 – 542, l. 14. The police observed Robinson's car and saw that the back windshield was shattered and had a bullet hole. R. 419, ll. 7 – 24. There were more bullet holes in Robinson's car than the projectiles that the police recovered. R. 548, ll. 14 – 19. The State's firearms expert agreed that the Youngs' firearm was a "submachine gun." R. 650, l. 13 – 653, l. 19. R. 636, ll. 10 – 19.

After the shooting, Bennie Hamilton was at a friend's house when Robinson came in with no shirt and with two beers in his hand. R. 403, l. 3 – 404, l. 2. Robinson said he had "been in a shootout." R. 404, ll. 3 – 6. Robinson asked Hamilton to take him to the police station. R. 405, ll. 5 – 6. He also asked Hamilton for bleach but, lacking bleach, Hamilton gave Robinson vinegar that Robinson used to clean his hands. R. 405, ll. 8 – 25. On cross-examination, Hamilton recalled giving a statement to the police on the day of the shooting in which Robinson said some men tried to shoot him and they shot a little boy. R. 407, l. 20 – 408, l. 9.

The police recovered a bullet from the Youngs' neighbor's house. R. 514, l. 14 – 516, l. 20. They also recovered a bullet from Minor's body. R. 553, ll. 8 – 24. Both were .38 caliber bullets, but one was a jacketed bullet. R. 627, l. 15 – 630, l. 3. The State's firearm expert said the markings on the bullets were consistent with being fired by the same gun, but he could not definitively state that the bullets absolutely came from the same gun. R. 627, l. 15 – 630, l. 3.

At the close of the State's case appellant moved for a directed verdict because the State failed to disprove self-defense. R. 664, l. 1 – 668, l. 8. Appellant argued that he was not at fault for bringing on the difficulty because he clearly withdrew from the prior encounter with the Youngs by driving away and fleeing from their house. R. 664, l. 1 – 668, l. 8. The State's evidence showed the Youngs were at fault by arming themselves and seeking out Young and

trying to kill him. R. 664, l. 1 – 668, l. 8. The trial judge denied the motion. R. 668, l. 12 – 670, l. 22.

The trial court erred in denying appellant's motion. A defendant is entitled to a directed verdict when the prosecution fails to provide evidence of the offense charged. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). When a defendant asserts an affirmative defense, such as self-defense, the prosecution must disprove the elements of the defense beyond a reasonable doubt. State v. Wiggins, 330 S.C. 538, 544 -45, 500 S.E.2d 489, 492-493 (1998).

To establish self-defense, four elements must be present: (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief, or if the defendant was actually in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life; and (4) the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in the particular instance. State v. Hendrix, 270 S.C. 653, 657-658, 244 S.E.2d 503, 505-506 (1978); State v. Dickey, 394 S.C. 491, 716 S.E.2d 97 (2011) (holding defendant was entitled to a directed verdict on self-defense).

Robinson meets the first element of self-defense despite the initial encounter because withdrawal restores one's right of self-defense. State v. Bryant, 336 S.C. 340, 345-46, 520 S.E.2d 319, 322 (1999). Robinson communicated his withdrawal by driving away and sufficient time elapsed that Robinson's right of self-defense was restored. The Youngs hunted Robinson with a

submachine gun. They fired multiple shots at his car. Under these facts, there can be no question that Robinson satisfies the remaining elements of self-defense. Robinson was entitled to shoot until the danger ended. State v. Marin, 415 S.C. 475, 482-83, 783 S.E.2d 808, 812-13 (2016). This Court should reverse.¹

¹This Court should ignore the evidence presented during the defendant's case, including Robinson's denial that he fired a gun at the Youngs' car and use this opportunity to overrule State v. Hepburn, 406 S.C. 416, 753 S.E.2d 402 (2014). At all times, the burden of proving the defendant's guilt rests on the State and the waiver rule adopted in Hepburn runs afoul of this important constitutional right.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's conviction.

A handwritten signature in black ink, appearing to read 'David Alexander', is written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of November, 2018.

STATE OF SOUTH CAROLINA

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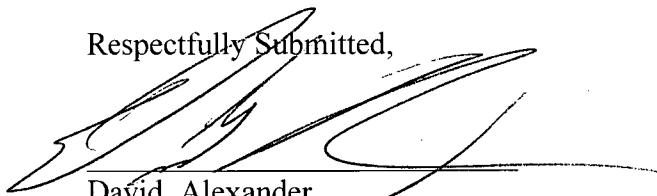
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Tyrone L. Robinson states:

1. He is an Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge G. Thomas Cooper, which was held on September 15-19, 2014, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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, He asks the Court to relieve him as counsel for Tyrone L. Robinson.

Respectfully Submitted,



David Alexander
Appellate Defender
ATTORNEY FOR APPELLANT

This 2nd day of November, 2018.

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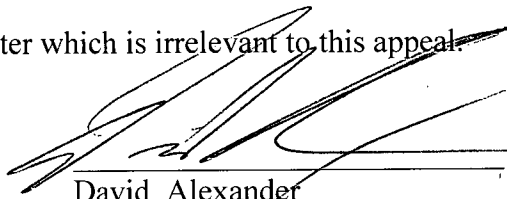
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment
- (2) Trial Transcript held September 15-19, 2014
- (3) Transcript of Hearing held February 27, 2014
- (4) State's Exhibit 4 and 6 (to be transported)

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

November 2, 2018


David Alexander
Appellate Defender

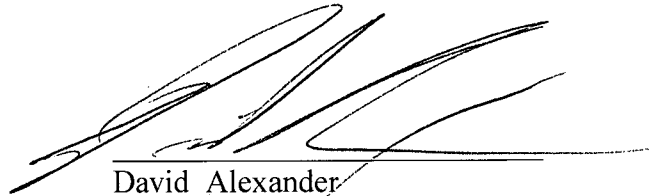
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ATTORNEY FOR APPELLANT

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."

November 2, 2018.



David Alexander
Appellate Defender

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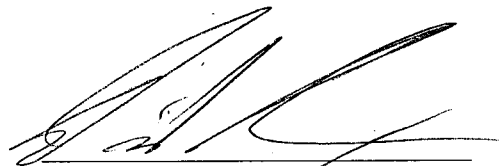
V.

TYRONE LORENZA ROBINSON,

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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 Melody J. Brown, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Tyrone L. Robinson, 235104, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 2nd day of November, 2018.



David Alexander
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 2nd day of November, 2018.

Courtney Powers (L.S.)

Notary Public for South Carolina

My Commission Expires: May 2, 2027.