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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Horry County
The Honorable Alexander S. Macaulay, Circuit Court Judge
Appellate Case Number 2020-000081

The State of South Carolina, Appellant,

vs.

John A. Webb, Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. The trial court erred in granting Respondent's Motion for Judgment in Arrest of Verdict when he does not have authority to grant the motion after a jury verdict of guilty when the judge is basing the decision on a consideration of the sufficiency of the evidence. The trial court erred in setting aside and vacating the jury's verdicts of guilty and entering verdicts of not guilty in favor of Respondent.

STATEMENT OF THE CASE

Respondent was indicted on three violations of the drug distribution laws pursuant to section 44-53-390(a)(4) of the South Carolina Code making it a felony to furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed. (See Indictments 2017-GS-26-03144-03146; R.294-299). He proceeded to trial on April 23, 2019, and a jury found him guilty of all charges. The trial court sentenced Respondent to concurrent sentences for each charge of one year, suspended on service of ninety days to be served on weekends with one year probation terminable upon completion of 240 hours of community service. (Sentencing Sheets; R.300-302).

After trial, Respondent filed a Motion for New Trial and/or Judgment in Arrest of Verdict. (Motion filed April 26, 2019; R.10-11).[1] After a hearing, the trial court granted the Motion in Arrest of Judgement, set aside and vacated the jury's verdicts of guilty, and entered verdicts of not guilty. (Order Granting Motion in Arrest of Verdicts; R.1-8). The State timely served and filed a Motion to Reconsider on November 15, 2019. (Motion to Reconsider; R.12-15). The trial court denied the motion by Order dated December 20, 2019. (Order Denying Motion to Reconsider; R.9). The State timely filed its Notice of Appeal and this brief follows.

[1] Respondent originally appealed from his conviction and sentence. Upon discovering the outstanding motion, he moved to remand for the circuit court's consideration. Once the circuit court ruled in his favor, his appeal was withdrawn and the State filed the currently pending appeal.

ARGUMENT

I. The trial court erred in granting Respondent's Motion for Judgment in Arrest of Verdict when he does not have authority to grant the motion after a jury verdict of guilty when the judge is basing the decision on a consideration of the sufficiency of the evidence. The trial court erred in setting aside and vacating the jury's verdicts of guilty and entering verdicts of not guilty in favor of Respondent.

The circuit court erred in vacating the jury's verdicts of guilty and entering his own verdicts of not guilty. The circuit court did not have the authority and power to replace the jury's verdict with his own. He improperly granted a Motion for Judgment in Arrest of Verdict after considering the sufficiency of the evidence as opposed to only determining the validity of the Indictments on their face. This Court should reverse his grant of the Motion for Judgment in Arrest of Verdict and remand to the trial court to reenter the jury's verdicts of guilty.

After a trial, the jury convicted Respondent on all three counts of violating the drug distribution laws. After trial, Respondent filed his Motion for New Trial and/or Judgment in Arrest of Verdict. In the motion, he essentially renewed his directed verdict motions. He asked the judge "act as Thirteenth Juror and set aside the verdicts of the jury in this matter and enter verdicts of Not Guilty on all indictments . . . ." He maintained the "record at trial is clear the State failed to directly reference in testimony or other evidence any statute contained within the mandated article or any rule issued by the Department of Health and Environmental Control setting out record keeping requirements." He then asserted: "Having failed to do so, the State failed in its burden to establish the existence of any evidence meeting these material elements of

the offense, even in the light most favorable to the State." (Motion; R.10-11). It is clear by the language of the motion, Respondent was challenging the sufficiency of the evidence.[2]

In its Order, the trial court clearly discussed the sufficiency of the evidence as well as the effect of the testimony at trial. (Order Granting Motion In Arrest of Verdicts; R.1-8). After discussing the lack of evidence presented at trial, the trial court cited to the abandoned directed verdict standard found in State v. Dobson, 281 S.C. 36, 38, 3 14 S.E.2d 3 10, 31 1 (1984) ("when the evidence fails to positively prove the guilt of the accused to the exclusion of any other reasonable hypothesis").[3] (Order p.5-8; R.5-8). The trial court, therefore, erred as a matter of law in granting the motion in arrest of judgment, in vacating the conviction by the jury, and in entering his own verdict of not guilty on each of the charges.

The appellate courts of this state have long held that a motion in arrest of judgment cannot be used to challenge the sufficiency of the evidence. The motion in arrest of judgment can only be used to challenge facial defects to the indictment. "[A] good legal exception to an indictment in arrest of judgment after verdict, must be for some defect in the indictment, for want of sufficient certainty in setting forth either the person, the time, the place, or the offence." State v. Crank, 18 S.C.L. 66, 69 (S.C. App. L. & Eq. 1831). The South Carolina Supreme Court stated:

> Arrest of judgment is the proper remedy, where there is some defect in the indictment, and on its face "as for the want of sufficient certainty, in setting forth either the person, the place or the offence." 4 Black. Com. 376. **It is never applicable to raise the question of sufficiency of evidence to sustain the allegations in the indictment.** It affords no relief whatever, where there is simply a conflict between the *allegata* and *probata*. In such cases the proper proceeding is a motion for a new trial, and not in arrest of judgment.

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[2] It is clear from the indictments that none are facially invalid. (Indictments; R294-299).

[3] See State v. Bennett, 415 S.C. 232, 236, 781 S.E.2d 352, 354 (2016) ("Nevertheless, a court is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.").

State v. Hamilton, 17 S.C. 462, 463 (1882)(emphasis added); see also, State v. Syphrett, 27 S.C. 29, 2 S.E. 624, 627 (1887) ("Such a motion [a motion in arrest of judgment] must be based upon some defect apparent upon the record, and cannot be sustained simply upon the ground of variance between the *allegata* and *probata*.").

More recently, this Court provided a good explanation of the motion in arrest of judgment:

> "A 'motion for arrest of judgment' is a postverdict motion made to prevent the entry of a judgment where the charging document is insufficient or the court lacked jurisdiction to try the matter." State v. Taylor, 348 S.C. 152, 160, 558 S.E.2d 917, 920–21 (Ct. App. 2001) (cert. granted May 30, 2002). A defendant may make a motion for arrest of judgment alleging an insufficiency of the indictment. Id.; see also State v. Brown, 201 S.C. 417, 23 S.E.2d 381 (1942) (holding motion for arrest of judgment should have been granted where trial court did not have jurisdiction to impose the sentence); State v. Jeter, 47 S.C. 2, 24 S.E. 889 (1896) (concluding it was error for trial court to deny motion for arrest of judgment where indictment was insufficient). **However, the defendant may not move for a verdict in arrest of judgment based on the insufficiency of the evidence to support the charges in the indictment.** Taylor, 348 S.C. at 160, 558 S.E.2d at 921; see also State v. Miller, 287 S.C. 280, 286, 337 S.E.2d 883, 886–87 (1985) (Ness, J., concurring in part and dissenting in part) (stating a defendant "may not move for verdict in arrest of judgment based on the sufficiency of the evidence to sustain the allegations in the indictment.") (emphasis in original) (citation omitted).

State v. Follin, 352 S.C. 235, 259, 573 S.E.2d 812, 824–25 (Ct. App. 2002) (emphasis added); see also, State v. Graham, 49 S.C.L. 310, 311 (S.C. Ct. App. 1868) ("The departure of the proof from the allegation is no ground for arresting judgment on a good indictment, but serves in support of a motion for new trial").

In State v. Dasher, 278 S.C. 395, 297 S.E.2d 414 (1982), the Supreme Court considered an appeal from a trial court's ruling. After the verdict, respondent moved and argued for a new

trial. The trial court held: "The verdict in this case is hereby vacated. The verdict of not guilty is directed by the court." Id. at 399, 297 S.E.2d at 416. The South Carolina Supreme Court explained: "Where new trial is sought, this Court has stated: 'A trial judge may not invade the province of the jury or substitute his verdict for theirs.'" Id. (quoting Watford v. S.C. State Highway Dept., 269 S.C. 130, 133, 236 S.E.2d 558.). The Court then became more blunt: "The trial judge is not a juror." Id. (quoting State v. Williams, 166 S.C. 63, 81, 164 S.E. 415). This is precisely what occurred in this case. The trial court became a juror, and a juror that overruled the other twelve by entering his own determination in place of that of the jury. This is not allowed in South Carolina criminal law. See State v. Taylor, 355 S.C. 392, 394, 585 S.E.2d 303, 304 (2003) ("It is well-settled that a verdict in arrest of judgment should not be granted based on the insufficiency of the evidence; the proper remedy is a new trial.").

In the instant case, Respondent sought to challenge the jury's verdict based on a post-trial motion grounded in a claim that there was insufficient evidence to support conviction. This is properly considered as a motion for a new trial and not as a motion in arrest of judgment. It is clear from the trial court's order, even referencing the abandoned standard for a directed verdict motion, he was ruling based on the sufficiency of the evidence presented at trial and not based on any defect in the indictment. The trial court erred in considering the motion in arrest of judgment. The trial court erred in granting the motion and subsequently vacating the jury's verdict of guilty on all charges. Finally, the trial court erred as a matter of law in becoming a super-juror and entering a verdict of not guilty on each charge. This Court should find the trial

court exceeded his authority and abused his discretion. This Court should reverse the decision of the trial court and reinstate the jury's verdicts of guilty.[4]

[4] To the extent Respondent made his motion in the alternative a motion for a new trial, this Court, in its discretion, may reverse the grant of the motion for arrest of judgment, reinstate Respondent's convictions, and remand for a consideration of the motion for a new trial.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the decision of the circuit court granting the motion in arrest of judgment should be reversed and the jury's verdicts of guilty on all three charges reinstated.

Respectfully submitted,

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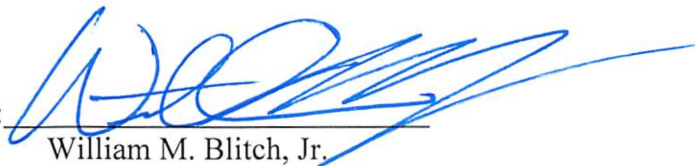

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Final Brief of Appellant filed October 15, 2020, complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, 407 S.C. 607, 607, 757 S.E.2d 421 (2014) (requiring redaction of social security numbers, names of minor children, financial account numbers, home addresses, and date of birth).

This 15th day of October, 2020.

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