

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Nov 12 2020

SC Court of Appeals

Appeal from Chester County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

QUINTON TYWAN MCCLINTON,

APPELLANT

APPELLATE CASE NO 2020-000243

ANDERS BRIEF OF APPELLANT

TAYLOR D GILLIAM
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in denying Appellant's motion for a directed verdict as to the charge of attempted murder, where no competent evidence existed to support sending the case to the jury?

STATEMENT OF THE CASE

On April 30, 2019, a Chester County grand jury indicted Appellant on three offenses: attempted murder, possession or display of a firearm during the commission of a violent crime, and assault and battery in the first degree. R. 680 – 685. Appellant appeared before the Honorable Brian M. Gibbons for an immunity hearing on July 9, 2019. R. 1. Michael Duncan represented Appellant; Candice Lively appeared on behalf of the state. Immunity was denied, and Appellant was tried before the Honorable J. Derham Cole and a jury beginning on February 3, 2020. Following a week-long trial, Appellant was found guilty as indicted. R. 669, l. 16 – 670, l. 2. Judge Cole sentenced Appellant to twenty five years on the attempted murder charge, five years on the possession of a weapon charge, and ten years on the assault and battery offense. R. 677, ll. 11 – 20.

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, appellate courts 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 429, 753 S.E.2d at 409.

ARGUMENT

The trial court erred in denying Appellant's motion for a directed verdict as to the charge of attempted murder, where no competent evidence existed to support sending the case to the jury.

Relevant facts

Appellant and a co-defendant, Montrell Graham, were tried following a shooting at the Images Club on Christmas Day in 2018. A man named Kochese Gregory was shot and sustained an injury to the abdomen. R. 219, l. 4 – 221, l. 7. Appellant was subsequently arrested and charged with attempted murder. R. 519, ll. 2 – 10.

The state's first witness, George Killian, told the jury that Appellant's nickname was Tril. R. 212, ll. 7 – 10. He also identified Appellant in the courtroom. R. 224, ll. 2 – 12. Killian and his brother, Kelvin, were at the club for a birthday party that began on Christmas Eve. R. 212, l. 18 – 213, l. 13. Killian testified that he heard gunshots at some point in the evening. R. 218, ll. 4 – 12. However, Killian stated at trial that he did not see Appellant shooting. R. 224, ll. 13 – 18. Multiple other witnesses during the state's case-in-chief testified similarly that they were unaware of who was shooting. R. 236, l. 20 – 237, l. 25; R. 263, l. 18 – 265, l. 19; R. 297, ll. 3 – 7. One witness, Daverican Gregory, testified that he only saw Appellant shooting a gun into the air, not at Kochese Gregory. R. 278, l. 9 – 279, l. 1; R. 284, ll. 7 – 17. Kochese Gregory, however, did testify that he saw Appellant shoot at him. R. 400, l. 5 – 401, l. 8.

Dr. David Jacobs, a trauma surgeon, was qualified as an expert in the field of trauma surgery. R. 430, l. 6 – 432, l. 12. He indicated that the injury suffered by Kochese Gregory resulted in great bodily injury and could have been fatal. R. 434, ll. 10 – 20.

After the state rested, Appellant moved for a directed verdict as to all three offenses. R. 562, l. 13 – 565, l. 14. Counsel argued that “there’s a failure of competent evidence to prove the charges against Mr. McClinton as set forth in the indictment[s].” Id. Counsel noted that various witnesses disagreed about the facts giving rise to the shooting, such that “no jury could find Mr. McClinton guilty beyond a reasonable doubt based on the testimony that some fellows wearing brown jackets maybe who went down at the bottom of the parking lot were firing shots back toward the club.” Id.

In response, the solicitor contended that various witnesses’ testimony, when pieced together, was sufficient to send the case to the jury. Id. The trial judge agreed with the state and denied the directed verdict motions. Id.

Appellant elicited testimony from one witness, Joseph Foster, after the state rested. R. 577 – 584. Foster was the owner of the Images Club and present the night of the shooting. Id. He described a scene wherein there was a back-and-forth shooting. R. 538, l. 21 – 539, l. 21. He observed Gregory shooting in Appellant’s direction. Id.

Following Foster’s testimony, Appellant rested. R. 584, ll. 12 – 20. Counsel for Appellant renewed his previous motions. R. 585, ll. 15 – 20. The trial judge again denied them. Id.

Discussion

Appellant’s case was ripe for a directed verdict, and the trial court erred in denying the motion. The disconnect between all of the testimony presented at Appellant’s trial prevented the evidence from tending to establish Appellant’s guilt beyond a reasonable doubt. Because of the conflicting stories and lack of consensus among the state’s witnesses, Appellant was entitled to a directed verdict on the offense of attempted murder.

Specific intent to kill is an element of attempted murder as codified in § 16-3-29 of the South Carolina Code. Under that section, “A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder.” *Id.* In State v. King, the South Carolina Supreme Court held that the General Assembly’s codification of attempted murder included specific intent to kill as an element. 422 S.C. 47, 810 S.E.2d 18 (2017). Earlier this year, this Court reversed a first degree assault and battery conviction in State v. McGowan, 430 S.C. 373, 845 S.E.2d 503 (2020), wherein McGowan lacked specific intent to injure an individual.

When a case is built wholly on circumstantial evidence, if the State fails to produce substantial circumstantial evidence the defendant committed a particular crime, he is entitled to a directed verdict. State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011). “The trial court should grant a directed verdict motion when the evidence presented merely raises a suspicion of guilt.” State v. Bostick, 392 S.C. 134, 142, 708 S.E.2d 774, 779 (2011). The State has the burden of proving “the accused was at the scene of the crime when it happened and that he committed the criminal act”. State v. Schrock, 283 S.C. 129, 133, 322 S.E.2d 450, 452 (1984). “The [trial] court should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty.” State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000).

When the evidence submitted raises a mere suspicion that the accused is guilty, a directed verdict should be granted because suspicion implies a belief of guilt based on facts or circumstances which do not amount to proof. State v. Hepburn, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013).

The trial court relied on flawed evidence when it denied Appellant's motion. Many of the witnesses relied on hearsay or modified their version of events such that there was no clear picture of what transpired on Christmas Day in 2018. Further, the state never established a specific intent to kill as required by King, supra. Accordingly, Appellant should have received a directed verdict.

CONCLUSION

Based on the foregoing, Appellant respectfully requests that this Court reverse his conviction.

s/Taylor D. Gilliam
Taylor D Gilliam
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of November, 2020.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Quinton Tywan McClinton states:

1. He is 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 J. Derham Cole, which was held on February 3-7, 2020, 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 Quinton Tywan McClinton.

Respectfully Submitted,

s/Taylor D. Gilliam
Taylor D Gilliam
Appellate Defender
ATTORNEY FOR APPELLANT

This 12th day of November, 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) Immunity Hearing dated July 19, 2019
- (3) Trial Transcript dated February 3-7, 2020
- (4) Indictments

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

November 12, 2020

s/Taylor D. Gilliam
Taylor D Gilliam
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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 12, 2020.

s/Taylor D. Gilliam
Taylor D Gilliam
Appellate Defender

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