

STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHEROKEE COUNTY

Court of General Sessions
The Honorable J. Derham Cole

RECEIVED

Nov 17 2020

Case No.: 2019-001778

SC Court of Appeals

Shaun Rogers, Jr.,

Petitioner,

vs.

State of South Carolina,

Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying Petitioner's motion for directed verdict when there was insufficient evidence to support the State's allegations that he was more than merely present during the commission of the crimes?

STATEMENT OF THE CASE AND OF FACTS

Petitioner Shaun Rogers, Jr. is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Cherokee County Clerk of Court. On April 25, 2019, he was indicted by the Cherokee County Grand Jury for murder (2019-GS-11-00690), attempted murder (2019-GS-11-00692), possession of a firearm during commission of a violent crime (2019-GS-11-00690), discharging a firearm into a dwelling (2019-GS-11-00693), attempted armed robbery (2019-GS-11-00691), burglary first degree (dwelling) (2019-GS-11-00694). He proceeded to trial before the Honorable J. Derham Cole and a jury October 7-9, 2019 in Cherokee County. He was found guilty of burglary in the first degree (dwelling) and attempted armed robbery, with the jury hung on the other charges.¹ Petitioner was sentenced to terms of imprisonment for twenty years for burglary in the first degree and twenty years for attempted armed robbery, with credit for time served. A notice of appeal was on October 17, 2019. This brief follows.

The factual basis for the charges is a drive-by shooting that occurred in Gaffney, Cherokee County, South Carolina on October 2, 2018. Overton Good and his girlfriend, Danielle Smith, were waking up and sitting in the living room when Jermaine Jefferies, Petitioner's co-defendant, knocked on the door. A gun was thrust through the door, but Mr. Good shut the door without incident. Ms. Smith called the police. Shortly thereafter, a car drove by and fired shots toward the home, one of which killed Mr. Good. At the time of filing, Jermaine Jefferies is in Cherokee County Detention Center awaiting disposition, though he has already accepted responsibility for being the shooter. (R. p.325, lines 17-22)

¹ Appellant is awaiting retrial on the other charges.

STANDARD OF REVIEW

“In reviewing the denial of a motion for directed verdict in a criminal case, the evidence must be viewed in the light most favorable to the State. A jury issue is created when there is any direct or circumstantial evidence which reasonably tends to prove the guilt of the accused.” State v. Kimbrell, 294 S.C. 51, 362 S.E.2d 630 (1987), citing State v. Owens, 291 S.C. 116, 352 S.E.2d 474 (1987); State v. Mathis, 287 S.C. 589, 340 S.E.2d 538 (1986).

“If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury.” State v. Cherry, 361 S.C. 588, 593-94, 606 S.E.2d 475, 478 (2004).

ARGUMENT

The trial court erred in denying Petitioner's motion for directed verdict when there was insufficient evidence to support the State's allegations that he was more than merely present during the commission of the crimes.

Petitioner appeals his convictions for burglary in the first degree and attempted armed robbery. Petitioner's convictions were based solely on the theory of accomplice liability, or "the hand of one is the hand of all." Throughout the State's case, there was no allegation that Petitioner physically performed any of the acts that satisfy the elements of the offenses for which he was indicted. Rather, the State argued that there was a prior agreement between the gentlemen, such that rises to the level of a common intent and purpose, such as required by State v. Cannon, 49 S.C. 550, 27 S.E. 526 (1897) and its progeny. Because there was a total lack of evidence presented to show knowledge or prior involvement by Petitioner, his directed verdict motion should have been granted, both at the end of the State's case and his own.

To make its case, Respondent presented witnesses that stated they saw two gentlemen, who had traveled in the same vehicle, talking near the home Good and Smith shared. Smith testified that she saw both men leave the vehicle and identified Petitioner; however, she stated that Petitioner never entered the home, nor did he possess a weapon. (R. p.115, lines 7-16) Additionally, prior to trial, Smith never identified either defendant by name. (R. p.116, lines 9-12) She stated that Good told the 911 dispatcher he knew the man who tried to enter the trailer was named Jefferies. (R. p.109, lines 8-10; p.117, lines 1-2; 8-11 and 911 recording (State's 18 and 19)) Ultimately, she only saw Petitioner looking toward the home, not actually near it or on the porch. (R. p.115, lines 17-19) She testified on direct examination that she thought she heard both men on the porch, but only saw Petitioner near the car. (R. p.111, line 24 – p.112, line 3) She identified that the gun that was thrust into the home was pink. (R. p.111, lines 8-9)

Testimony was also presented by the decedent's mother, Carolyn Good. She testified that a car carrying two men pulled into her driveway for approximately 45 seconds prior to the incident. (R. p.124, line 15 – p.125, line 2) Shortly thereafter, they pulled away and she assumed they had the wrong address. (R. p.125, lines 12-13) However, she watched as they drove away toward a stop sign at the exit of the neighborhood. As they did so, the passenger leaned out of the car and fired at Mr. Good's home. (R. p.126, lines 4-8; lines 14-15; p.127, lines 7-11) She also identified the gun as being pink. (R. p.127; lines 23-25) Mrs. Good testified that she only got a good look at one of the men, he being the one who had the gun, and he was Jermaine Jefferies. She provided this identification to law enforcement. (R. p.130, lines 3-9) She further admitted that she did not see Petitioner or identify him in a lineup. (R. p.134, lines 11-23)

Respondent's other witnesses testified to a Facebook post made by Petitioner before the incident (Richard Lanier Good, Jr. – decedent's brother), a bullet hole in a home (Virginia Anne Lindsey, neighbor), the fact that the co-defendants attempted to obtain a job for Jefferies at a bank the same day (Angela Crawford Smith and May Snipes Denton), and that the co-defendants took a cousin of Jefferies' to pay for his ankle monitor (JaQuan Wood). None of this testimony placed either co-defendant at the incident or reflected on their actions whatsoever. The only potential connection in these latter witnesses was the testimony from Billy Anthony, a crime scene investigator with Cherokee County Sheriff's Office, who testified that the pink gun which fired the bullets recovered from the scene was found in Jefferies' house. (R. p.203, lines 6-15)

In his defense, Petitioner presented testimony from Lashonda Conley, mother of Jefferies, who testified that she owned a pink gun that had gone missing and drove a silver Ford Fusion at the time. (R. p.232, line 8 – p.233, line 2; p. 234, lines 17-21) These facts clearly are circumstantial links between Jefferies and the crimes.

The testimony as described above only placed Petitioner at the scene, nothing more. “Mere presence at the scene of a crime is insufficient to convict one as a principal on the theory of aiding and abetting.” State v. Zeigler, 364 S.C. 94, 103, 610 S.E.2d 859, 864 (Ct. App. 2005); see also State v. Johnson, 291 S.C. 127, 352 S.E.2d 480 (1987); State v. Condrey, 349 S.C. 184, 562 S.E.2d 320 (Ct. App. 2002). Respondent did not and could not present any evidence as to Petitioner’s state of mind, the intentions of the co-defendants, any agreements to act together, or even any knowledge Petitioner may have possessed regarding Jefferies’ plans.

“To be guilty as an aider or abettor, the participant must have knowledge of the principal’s criminal conduct.” State v. Leonard, 292 S.C. 133, 355 S.E.2d 270 (1987). “Mere presence at the scene is not sufficient to establish guilt as an aider or abettor.” Id. at 137, 355 S.E.2d at 272. There is simply no evidence presented at trial that establishes more than Petitioner’s presence at the scene. It is plausible that Petitioner drove by the home to exit the neighborhood, all the while begging Jefferies to stop shooting.

The record contains a transcript of the sentencing that was passed by Judge Cole. In it, while contemplating pleading guilty pursuant to Alford² for the charges on which the jury could not reach a verdict, Petitioner denies any knowledge of the crimes beforehand. (R. p.320, lines 6-22) Even when Petitioner had nothing to lose, he denied any knowledge of the crimes.

Simply, there is no evidence, whether direct or circumstantial, to show that Petitioner had any prior knowledge of Jefferies’ plans to commit these criminal acts. Petitioner was with Jefferies at the scene – this much is evidenced by eyewitness testimony. However, Respondent failed to produce any evidence that shows prior knowledge or discussion of the acts such that Petitioner

² North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160 (1970)

would have been acting in concert with Jefferies. Petitioner was merely present at the scene and, as such, his convictions should be overturned.

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CONCLUSION

For the above stated reasons, Petitioner respectfully requests that this Court reverse his convictions.

Respectfully submitted,

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By 
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November 16, 2020