STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

ORIGINAL

Appeal from Greenville County

Honorable Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRADFORD HESTER WILLIAMS,

APPELLANT

APPELLATE CASE NO 2017-001753

RECEIVED
OCT 10 2018
SC Court of Appeals

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to direct a verdict of acquittal when the State's circumstantial evidence was not substantial and merely raised a suspicion of guilt?

STATEMENT OF THE CASE

In July of 2015, the Greenville County Grand Jury indicted Appellant, Bradford Hester Williams, for two counts of murder and two counts of possession of a weapon during the commission of a violent crime, indictments #2015-GS-23-2941, 2942. On August 8, 2015, Appellant proceeded to jury trial before the Honorable Alexander S. Macaulay. Scott D. Robinson represented Appellant at trial. Jonathan M. Gregory and L. Mark Moyer prosecuted the case. The jury returned verdicts of guilty. Judge Macaulay sentenced Appellant to two life sentences for the murder charges and two concurrent five years sentences for the weapon charges. A timely notice of intent to appeal was served on August 18, 2017. This appeal follows.

STANDARD OF REVIEW

"[W]hen the State fails to produce substantial circumstantial evidence that the defendant committed a particular crime, the defendant is entitled to a directed verdict." State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011); see State v. Hepburn, 406 S.C. 416, 429, 753 S.E.2d 402, 408 (2013) ("In cases where the State has failed to present evidence of the offense charged, a criminal defendant is entitled to a directed verdict."). Further, when the State relies exclusively on circumstantial evidence and a motion for a directed verdict is made, the trial judge is concerned with the existence or non-existence of evidence, not with its weight. State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004). The trial judge "should not refuse to grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty." Id. " 'Suspicion' implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." Id. "However, a trial judge is not required to find that the evidence infers guilt to the exclusion of *any other reasonable hypothesis*." State v. Ballenger, 322 S.C. 196, 199, 470 S.E.2d 851, 853 (1996) (emphasis added).

"On appeal from the denial of a directed verdict, this Court views the evidence and all reasonable inferences in the light most favorable to the State." State v. Butler, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014). State v. Pearson, 415 S.C. 463, 469–70, 783 S.E.2d 802, 805–06 (2016).

ARGUMENT

The trial judge erred in refusing to direct a verdict of acquittal when the State's circumstantial evidence was not substantial and merely raised a suspicion of guilt.

The jury found Appellant guilty of the fatal shooting of Sylvester "Vess" Fuller and Jamal "Wolf" Justice outside of the Club Bugatti Grand in the early morning hours of November 27, 2014. The State's main evidence was circumstantial and consisted of testimony from Quante "Forty" Davis and statements made by Mitchell Sloan and introduced as impeachment evidence when Sloan did not recall his prior statements. At the close of the State's case Appellant moved for a directed verdict of acquittal. (R. p. 342, line 24 – p. 343, lines 1-8). The judge denied the motion stating, "The Court is not concerned with the weight of the evidence, only whether there is sufficient evidence to go forward. At this point, the Court does find there is sufficient evidence to proceed." (R. p. 343, lines 17-20). The trial judge erred.

At the time of trial State's witness Davis had a pending pointing a firearm charge from York County and was transported to court from the York County jail. (R. p. 222, line 20 – p. 223, lines 1-13). According to Davis, he and the Appellant had a dispute over a firearm, a Glock 40 caliber, and Appellant had been threatening Davis. (R. p. 224, line 19 – p. 225, 226, lines 1-25; p. 253, lines 12-21). On the evening of November 26, 2014, Davis went to the Club Bugatti Grand with Fuller and Justice. (R. p. 227, lines 2-13). Davis claimed that Appellant came in the Club while they were there. (R. p. 235, lines 8-16). Davis testified that when Appellant came in the club he, Fuller and Justice stepped outside of the Club and Davis identified Appellant as the person who had been threatening him. (R. p. 236, line 25 – p. 237, lines 1-25). Davis testified that Fuller and Justice went back inside the Club while he walked around the left side of the Club to make a phone call. (R. p. 238, line 18 – p. 239, lines 1-5). According to Davis, he heard

gunshots and when he walked back to the front of the Club he saw Appellant in a light gray Cadillac leaving in a hurry. (R. p. 239, line 6 – p. 240, 241, lines 1-4). Davis admitted that he did not see Appellant with a gun. (R. p. 257, lines 18-24). Davis testified that as the Cadillac was leaving, he saw Fuller and Justice on the ground. (R. p. 247, lines 3-9). Davis went back in the Club and told the owner to call an ambulance. (R. p. 247, lines 10 – 19). Davis then left the Club and went to the Boulder Creek Apartments. (R. p. 249, lines 17-22). Davis claimed he left because there was an arrest warrant for him for violating probation. (R. p. 249, lines 23-25). Davis denied having a weapon. (R. p. 249, lines 12-13). The owner of the Club, William Keith Ellison, testified that Davis came to the door waving a gun and saying that someone shot his friends. (R. p. 432, line 13 – p. 433, lines 1-10). Investigator Fortner testified that he learned that Davis dropped what he claimed to have been a BB gun when he returned to the Boulder Creek Apartments on the night of the shooting. (R. p. 332, lines 14-25).

On December 8, 2014, Mitchell Sloan was in the Oconee Detention Center when he claimed to have information about the shooting at the Club Bugatti Grand. (R. p. 275, line 9 – p. 276, lines 1-25). Investigator Fortner interviewed Sloan at the detention center and the interview was recorded. At trial Sloan did not recall what he told Investigator Fortner and the audio recording of the interview was admitted in evidence as State's Exhibit #53 and played for the jury. (R. p. 299, line 1 – p. 300, lines 1-8). In the audio Sloan claimed that Appellant told him that the shooter left the scene in a silver Cadillac, the gun used was a .380 and that each person was shot three times. (R. p. 322, line 10 – p. 323, 324, lines 1-12). Investigator Fortner confirmed that six .380 shell casings were recovered at the scene. (R. p. 322, line 22 – p. 323, 324, lines 1-3). At trial Sloan testified that the information he provided to Investigator Fortner about Appellant was false. (R. p. 277, lines 1-6). Sloan testified that the information he

provided came from talk on the street and he provided the information because he believed that it would help him be released from jail before Christmas. (R. pp. 308 – 311).

Appellant testified that on the night of November 26, 2014, to the morning of November 27, 2014, he was in a motel room at the Savannah Suites with his girlfriend Tiara Washington. (R. p. 414, lines 2-10). Tiara Washington testified that Appellant was with her at the Savannah Suites Motel between midnight and 7:00 AM on November 27, 2014. (R. p. 388, lines 8-15). Appellant admitted that he owned a Cadillac but testified that on November 27, 2014, the Cadillac was in the shop to have the radiator replaced and they were driving a green Crown Victoria. (R. p. 419, lines 12-24). Washington confirmed that she borrowed a green Crown Victoria from her cousin around Halloween because the Cadillac was being repaired. (R. p. 392, line 2 – p. 393, lines 1-25). Washington testified that they checked out of the Savannah Suites on November 27, 2014, due to maintenance issues with a door and they were refunded the amount of money they had pre-paid for a full week. (R. p. 395, line 7 – p. 396, lines 1-8).

There was no forensic evidence linking Appellant to the shooting, a .380 caliber gun was not recovered and the only person to place Appellant at the scene was Davis. The owner of the Club, Ellison, testified that Appellant was not in the Club on the night of the shooting. (R. p. 434, lines 3-11). The State relied on circumstantial evidence in the form of testimony from Davis that he saw Appellant leaving the scene after hearing gunshots, statements attributed to Appellant by Sloan, the fact that Appellant owned a Cadillac and witnesses observed a Cadillac leaving the scene and the fact that Appellant checked out of the Savannah Suites Motel the day after the shooting. This circumstantial evidence was not substantial and merely created a suspicion of guilt. The judge erred in refusing to direct a verdict of acquittal.

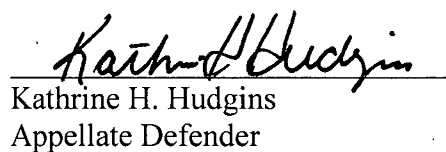
In State v. Pearson, 415 S.C. 463, 473, 783 S.E.2d 802, 807–08 (2016), the South Carolina Supreme Court wrote:

> In contrast, the trial court, when ruling on a directed verdict motion, "views the evidence in the light most favorable to the State and must submit the case to the jury 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.' " Id. (quoting Littlejohn, 228 S.C. at 329, 89 S.E.2d at 926). Based on this distinction, the Court explained:
>
> [A]lthough the *jury* must consider alternative hypotheses; the *court* must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt. This objective test is founded upon reasonableness. Accordingly, in ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt.
>
> Id.; see State v. Larmand, 415 S.C. 23, 32, 780 S.E.2d 892, 896 (2015) ("Although Respondent presented plausible explanations for each of these facts, our duty is not to weigh the plausibility of the parties' competing explanations. Rather, we must assess whether, in the light most favorable to the State, there was substantial circumstantial evidence from which the jury could infer Respondent's guilt.").

Viewing the evidence in the light most favorable to the State, the State failed to present substantial circumstantial evidence which reasonably tends to prove the guilt of Appellant, or from which his guilt may be fairly and logically deduced. In State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004), the South Carolina Supreme Court wrote, "The circuit court should not refuse to grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. Id. at 409, 535 S.E.2d at 127. 'Suspicion' implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001)." The evidence presented by the State merely raises a suspicion that Appellant is guilty. The trial judge erred in refusing to direct a verdict of acquittal.

CONCLUSION

Based on the above argument, this Court should reverse the conviction and sentence and remand in order for the trial court to direct a verdict of acquittal.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of October, 2018.

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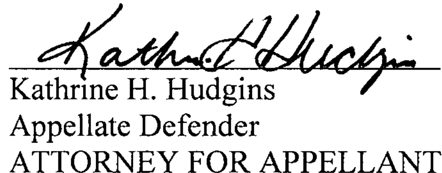
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Bradford Hester Williams 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 Alexander S. Macaulay, which was held on August 7 - 11, 2017, 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 Bradford Hester Williams.

Respectfully Submitted,



Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

This 10th day of October, 2018.

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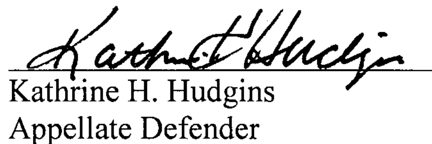
DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

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

(1) True-billed indictments and sentencing sheets;
(2) Complete trial transcript;
(3) Juror strike sheet;
(4) State's Exhibit #53 – CD audio interview of Mitchell Sloan – **TO BE TRANSPORTED.**

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

October 10, 2018



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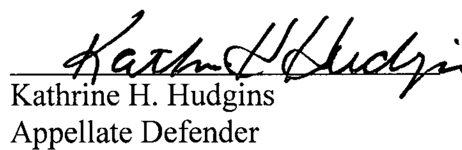
<u>**CERTIFICATE OF COUNSEL**</u>

The undersigned certifies that to the best of my ability this <u>Anders</u> 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."

October 10, 2018.



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