

RECEIVED

Dec 07 2021

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

Appellate Case No. 2021-000701

The Honorable J. Derham Cole, Circuit Court Judge

The State of South Carolina.....Respondent,

v.

Tremaine Pierre Johnson.....Appellant.

INITIAL BRIEF OF APPELLANT

Elizabeth Franklin-Best
Elizabeth Franklin-Best, P.C.
Bar No. 72555
2725 Devine Street
Columbia, South Carolina 29205
(803) 445-1333
elizabeth@franklinbestlaw.com

Counsel for Appellant

Other Counsel:

William Blich, Jr.
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-3372

Counsel for Respondent

TABLE OF AUTHORITIES

<i>State v. Arnold</i> , 361 S.C. 386, 605 S.E.2d 529 (2004).....	13
<i>State v. Bennett</i> , 408 S.C. 302, 758 S.E.2d 743 (Ct. App. 2014)	13
<i>State v. Bostick</i> , 392 S.C. 134, 708 S.E.2d 774 (2011).....	12
<i>State v. Manis</i> , 214 S.C. 99, 51 S.E.2d 370 (1949).....	12
<i>State v. Mitchell</i> , 341 S.C. 406, 535 S.E.2d 126 (2000)	12
<i>State v. Pearson</i> , 410 S.C. 392, 764 S.E.2d 706 (Ct. App. 2014)	13
<i>State v. Schrock</i> , 283 S.C. 129, 322 S.E.2d 450 (1984)	12
<i>State v. Williams</i> , 321 S.C. 327, 468 S.E.2d 626 (1996)	12

INDEX

Table of Authorities.....	i
Statement of Issue on Appeal.....	2
Statement of the Case.....	2
Relevant Facts.....	2
Argument.....	11
Conclusion.....	14

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred by not granting Johnson's motion for a directed verdict because the evidence adduced at trial was not sufficient to show more than a mere suspicion that Johnson was responsible for the murder of the victim?

STATEMENT OF THE CASE

Tremaine Pierre Johnson was indicted by the Spartanburg County grand jury for murder (2019-GS- 42-2045). He and his co-defendant, Robert Tyrell Gentry, were tried before the Honorable J. Derham Cole and a jury between June 14 and June 17, 2021. Gentry was indicted for accessory before and after the fact of murder. Appellant was represented by N. Douglas Brannon; the State was represented by Barry Barnette and Jennifer Elizabeth Wells. Johnson was convicted and sentenced to life in prison.

This appeal timely follows.

RELEVANT FACTS

Tremaine Pierre Johnson (Mr. Johnson) was charged and convicted for the murder of Brechue Ferrarri Wiles (Bree). Tr. 14, 109. Johnson was tried along with his co-defendant, Robert Gentry, who was charged with accessory before and after the fact of murder. Tr. 14-15. Bree Wiles lived at Campus Edge Apartments near the campus of the University of South Carolina Upstate. Tr. 110. On May 9, 2018, Bree was shopping at Stein Mart with her mother, Fontae Wiles (Ms. Wiles). Tr. 126. The two went out shopping for clothes for Ms. Wiles to wear to her aunt's 60th birthday dinner party. Tr. 127. Ms. Wiles lived with her aunt, Joann Frances Littlejohn (Ms. Littlejohn), for whom the party was being thrown. Tr. 125. Around 8:00pm that night they returned

to the residence and found themselves locked out of the home. Tr. 126. The two sat in Bree's car and waited for Ms. Littlejohn to return and let them into the house. Id.

After everyone was settled into the house, Ms. Littlejohn was preparing dinner when Bree received a phone call. Tr. 127. The phone call was reportedly from a male. Tr. 130. Ms. Littlejohn and Ms. Wiles heard Bree talking loudly on the phone during the entirety of the conversation. Tr. 127. Shortly after the call ended, Bree informed her mother and aunt that she was going to meet someone and would be right back. Tr. 128. Ms. Wiles testified that she recalled Bree saying that she was going to meet someone at Duncan Park near the water. Tr. 138. Both women pleaded with Bree not to go out because they thought it was too late, but Bree insisted on leaving. Tr. 128. Throughout the night, Ms. Wiles repeatedly called and texted Bree and told her to come home. Tr. 130. She recalled hearing a male on the other line saying, "we have to go, come on, hang up the phone, we gotta go." Tr. 130. Bree never came home that night. Tr. 130.

The next day, May 10th, Ms. Wiles and Ms. Littlejohn went to work. Tr. 131. They both worked for the same nursing home. Id. Around noon, neither had heard from Bree. Ms. Wiles became concerned. Tr. 131. It was customary for Bree to speak to her mother around noon every day. Tr. 131. Ms. Wiles continued to work until 4:30pm. After she got off work, Ms. Wiles took Ms. Littlejohn's car and traveled to Bree's apartment to see if she could find Bree or her car. She could not find either. She then went to Tremaine Johnson's house. Tr. 131. Mr. Johnson and Bree had been in a relationship.

Mr. Johnson's mother answered the door and informed Ms. Wiles she had not seen Bree or Mr. Johnson at that point. Tr. 142. Ms. Johnson called her son, who also stated he had not seen Bree in the last couple of days. Tr. 142. He told her he last saw her on Tuesday. Tr. 143. Ms.

Wiles left and went home. Later that day, Bree's younger sister posted on Facebook stating that her sister was missing. Tr. 144.

On the morning of May 11th, Mr. Louis Dischler (Mr. Dischler) was on his daily morning walk through Duncan Park. Tr. 120. Mr. Dischler, who lived 500-600 feet away from where the body was discovered, testified that the park has two trails that run through it. Tr. 121, 122. One is an asphalt trail and runs through the woods, the other is unimproved and runs directly into the lake. Tr. 121. Mr. Dischler took the second trail towards the lake. As he walked alongside the lake, he noticed a shoe. Tr. 121. According to him, this was not a shoe that someone would take walking on a trail. He referred to it as a "street shoe." Tr. 121. He continued to walk and found a second shoe close by. Tr. 121. He proceeded along the trail where he eventually found a body of what appeared to be "a girl of small stature" face down by the lake. Tr. 121. Mr. Dischler did not have his cellphone. Tr. 121. He returned to the entrance of the path where he found another person walking and asked them to call 911. Tr. 122. He waited at a picnic table until the police showed up to investigate the scene. Tr. 122.

In a nearby parking lot, law enforcement found Bree's car. One of the car doors had been left open. Tr. 153. Investigators used the canine unit to track her scent. Tr. 155. The canine went straight from the smell of the car directly to where Bree's body had been found in the lake. Tr. 159, 160. This led investigators to believe that her body was taken to the lake directly from the car to the lake. Tr. 160. Forensics confirmed that it was Bree's body in the lake. On that same day, Ms. Wiles had gone to the Spartanburg County Sheriff's Office to file a missing person's report. Tr. 144. Ms. Littlejohn met her there. Tr. 132. While the police talked to Ms. Wiles, Bree's body was being discovered by the officers at the lake. Tr. 133. Law enforcement informed Ms. Wiles. Tr. 133.

After identifying it was Bree Wiles's body in the lake, Investigator Chris Taylor of the Spartanburg Police Department tried to find out who was the last person Bree was with. Tr. 353. He spoke with Ms. Wiles and Ms. Littlejohn who told Taylor she was a relationship with Tremaine Johnson at the time of her death. Tr. 354. Investigator Taylor contacted Tremaine's mother, and through her, Mr. Johnson himself. Tr. 354. The investigators met Mr. Johnson at his residence. He was then taken to the police station. Tr. 354.

During the investigation, Mr. Johnson gave police consent to search his phone, as well as a buccal swab. Tr. 358-59. Investigators extracted data from Mr. Johnson's cell phone and found there had been communication between he and another individual, Robert Gentry, leading up to Bree's disappearance. Tr. 361. Investigators subsequently spoke to Mr. Gentry. On May 18, Mr. Gentry gave consent to the investigators to search his car and his home. Tr. 229. On May 21, he consented to the search of his phone. Tr. 236

Investigator William Reece of the Spartanburg County Police Department was the supervisor of the criminal investigations division at the time of these events. Tr. 223. He reviewed the phone call details on the phones and conducted a search of Mr. Gentry's car and home. Tr. 223. While searching Mr. Gentry's car, police found a partial box with TulAmmo in his glove box with a .40 caliber Smith and Wesson pistol. Tr. 231. Law enforcement also found an additional empty box of TulAmmo on the floorboard. Tr. 230. Additionally, during a search of his home, law enforcement found a Smith and Wesson box under his bed. Tr. 234. Although the gun recovered by the police could have been a match to the bullet found at the crime scene, Michele Eichenmiller, a SLED forensic firearms examiner testified that "thousands, if not hundreds of thousands of Smith and Wesson .40 caliber pistols exist in the possession of Americans today. Probably "thousands" in South Carolina alone. Tr. 300. Additionally, they are not illegal to own, and a Mr. Gentry

purchased this weapon, as evidenced by a March 20, 2017 receipt introduced at trial. Tr. 384, 399. A search of Tremaine Johnson's car did not produce anything of any evidentiary value. Tr. 190.

Searches were conducted on the cell phones of Mr. Gentry and Mr. Johnson. Investigator A.J. Smith of the City of Spartanburg was asked to look for any information in reference to Johnson and Wiles having a relationship. Investigator Reece also looked for communications between Wiles and Johnson. Tr. 225.

On April 5, 2018, their communications began. Tr. 244. On May 1, Bree began to suspect that she was pregnant. Tr. 246. Bree indicated she believed Mr. Johnson was acting different towards her. "Hey. I don't like how you've been acting towards me. I didn't do anything wrong, and I just feel since you treat me like a random bitch, I don't feel a need for us to talk anymore." Tr. 248. The two continued to communicate about their relationship and the baby for the next few days. Tr. 249-255. Investigator Reece testified that Johnson conducted internet searches for abortion clinic on May 2. Tr. 251. Later he conducted a search for "Is the poisonous in a granddaddy long leg?" Tr. 253, ll. 7-8. On May 3, he searched for "what can you-- what can you take to get rid of a baby in your stomach?" and "Mifeprex or Mifeprexon." Tr. 253. Later on May 3, Johnson conducted searches for "poison" and "types of poison" and "Poison ivy" and "Poison that can kill you for sale." Tr. 255.

On May 5, there were communications from Wiles to Johnson that her mother had purchased a diaper disposal pail for the baby. Tr. 257.

Later on that date, there was an exchange where Wiles indicated there was something "called early D.N.A. and I would have to pay \$400 to \$800." Since there was a possibility of a miscarriage she wanted to wait until she was 5 months pregnant. Tr. 258.

On May 7, Wiles sent Johnson a picture of her stomach. Tr. 259.

On May 8, Wiles had a conversation with her cousin Jeremy at 10:46pm. Tr. 260. She said she was "scared to see her" referring to her mother. Jeremy responded, "I know. But you can do it. She's a Christian mother." Tr. 261. Shortly after that, Wiles sent a message to Johnson that said: "You know what. Fuck you! I should have told you to your face. I'm not going to disrespect your mom like that. I don't need you in my child's life. Let me tell you one thing now. You-- I'll-- don't try to come back! You said what you said." Tr. 261. At 11:00pm, she stated: "Nothing else I can forgive you for. Good bye. You're blocked." Tr. 261. Johnson responded "Shut up. Ain't nobody outta the child's life. I didn't have nothing else to say." That message was not read by Wiles. Tr. 262.

On the morning of May 9, communications began between Mr. Johnson and Mr. Gentry via Facebook Messenger. The two spoke on the phone once that day for a minute and 25 seconds. Tr. 264. The two continued to stay in contact sparingly over the next few days. As they were messaging back and forth, their phone correspondences were deleted by Mr. Gentry. Tr. 273. The Facebook messages, however, were not deleted. Tr. 300. According to Mr. Reece, although messages are deleted, they are unable to see when messages or calls were deleted or how many were deleted at once. Tr. 303, 309. Cellebrite, the software program used by law enforcement to extract the cell phone data, can only identify that calls and text messages were deleted. Tr. 298. Johnson used Daniel Hines's phone at 9:07 to call Wiles. The call connected and they spoke for 6 minutes and 58 seconds. Tr. 268.

On May 9, 2018 at 9:31, Wiles called Johnson's phone and they spoke for a minute and 35 seconds. Tr. 268. At 10:17pm, Johnson messaged Gentry and asked "what you doing?" Tr. 269. Ms. Sidney Dean spoke to Johnson at 11:48 and they spoke for 10 minutes. Tr. 271.

On May 10, Gentry sends a message to Johnson that said, "All right. I'm up. About to head to work." Tr. 271. At 10:36 Gentry began to conduct internet searches on "It's cheaper than dirt", "cheap guns" "Bulk ammo", "guns, parts and accessories, "Cheaper than dirt." Tr. 272. Reece testified that "Cheaper than dirt" is a website for purchasing weapons. Tr. 272. At 10:44, Johnson reached out to Gentry to see where he was. Johnson conducted an internet search to get an address for Gentry's work location. Tr. 273. At 11:16, Johnson sent Gentry a message asking him to step outside of work for a second. Tr. 273. Gentry responds, "Shit. What's up?" Tr. 273. Johnson attempted to call Gentry and they spoke for 16 seconds. Tr. 274. At 12:41, Gentry conducts additional internet searches, "sell items cheaper than dirt", "handguns for sale. Pistols, revolvers, 9mms, cheaper than dirt, diamond back a.m., semi auto pistol, 9 mm, barrel, 15-round Ameriglo, night site, stainless steel, slide, Palmer frame, flat dark earth finish with the serial number." Gentry continued to look up numerous other search terms associated with guns. Tr. 275. At 2:18, he searched "only 11 states require gun owners to report stolen weapons to police. My pistol was stolen." Tr. 276.

On May 10 at 2:56, Johnson sent Gentry a message that stated, "do it today, Fam! Happened two days ago." Tr. 276. Gentry responded "Iat" (or, all right). Tr. 276.

Then, at 3:03, Bree's mother sent a message to Johnson to ask if he had seen Bree.

At 3:05- 3:15, Gentry searches for "report firearm. Theft or loss. Alcohol, tobacco, firearms and explosives." Tr. 277.

At 4:43, Johnson responds to Ms. Wiles's text and stated, "Hey. How are you doing? No. I haven't. Not since in a couple of days ago. Is everything okay?"

At 12:39am, Johnson sent a text to Bree that stated, "Hey. Are you okay? Where you at." Tr. 279. Johnson then called Gentry and they spoke for 1 minute and 26 seconds. Tr. 279.

Although the two began to speak on May 9, according to Mr. Reece, there was never a mention of any gun or firearm of any sort.

Q: Now, there is nothing in the texts or Facebook messages between Gentry about a gun or firearm of any kind?

A: No sir.

Q: There are no any texts or facebook messages between Gentry and Johnson even using slang word, slang words for gun...There's nothing like that in the text between the two.

A: Correct.

Q: There's nothing about Johnson wanting to get a gun.

A: No, sir.

Q: Nothing about Johnson wanting to get a gun from Gentry.

A: Correct.

Q: Nothing about can I borrow a gun.

A: Correct.

Q: Nothing about Johnson asking Gentry whether he had a gun.

A: Right.

Q: There's also nothing in the texts or Facebook messages between Gentry and Johnson about the return of a gun.

A: Correct

Tr. 293-294.

R.C. Clay Simmonds of SLED was qualified as an expert, without objection, in cellular data analysis and cell tower analysis. Tr. 329. He began his analysis of the cellular data on May 9, based on his communication with the investigators in the case. Tr. 339. At 10:18pm, Johnson's telephone was utilizing Tower 61320, Sector 3. Ms. Wiles's phone utilized the same tower at 11:23,

11:25, and 11:27pm. This is the tower that services Duncan Park area of Spartanburg. Tr. 346. All three of those calls went to voice mail. Tr. 348. At 11:24pm, Johnson's phone moved to Tower 62603, Sector 1. It returned to Tower 61320 using sector 2 later. On cross-examination, Simmonds testified that the use of cellular data "isn't GPS," it's "just a general area." Tr. 351, ll. 5-7.

Sidney Dean was a female friend of Johnson's. She spoke to him May 9 at 11:48. Tr. 368. He testified he seemed "like he was off. He didn't really want to talk to me." Tr. 368, ll. 23-24. She never spoke to him again. Tr. 369.

Caprice Alo is Robert Gentry's child's mother. Tr. 371. She was living with Gentry's mother at the time. On the night of May 9, Gentry, she, and Gentry's mother had a barbeque. Johnson came by the house around 4:00 or 5:00pm. Tr. 374. Johnson and Gentry spoke in the road. Tr. 374. Gentry met Johnson at his car. She did not observe anything between the two. Johnson was there for less than five minutes. Tr. 375.

Michele Eichenmiller from SLED was qualified as an expert in firearms examination. Tr. 389. No gun was ever recovered in this case, but she was able to testified that only one manufacturer makes firearms with the specifications of the bullet that was found in the victim. She opined that Smith & Wesson was the only brand who could have fired the bullet in this case. Tr. 395. She noted there were "thousands, if not hundreds of thousands" of Smith & Wesson .40 caliber pistols in the United States and "still probably thousands" in South Carolina alone. Tr. 399, ll. 17-19.

At trial Ms. Donna Money testified as an expert witness in DNA analysis without objection. Tr. 402, 403. During this testimony, she spoke about four of the items she tested for DNA evidence. Exhibit 1 – the buccal swab from Tremaine Johnson, Exhibit 2 – the shell casing from the crime

scene, Exhibit 3 – the spot of blood from the crime scene, Exhibit 4 – a swab off some keys that were found at the crime scene and Exhibit 9 – the fetus recovered from Bree Wiles. Tr. 404, 405, 408. Exhibit 1 was used as DNA of Mr. Johnson to compare to the other exhibits in an attempt to find any physical evidence to connect him to this crime. After examination of Exhibit 2, the shell casing, Ms. Money concluded that there was no usable DNA from the casing. Tr. 409. Exhibit 3, the blood spot from the scene, came back as a match to the DNA of Bree Wiles. The same was concluded for Exhibit 4, the key found three feet from her body. The only evidence that tied to Mr. Johnson to this murder was the fact that DNA concluded that he was the father of the child found in Bree Wiles. This evidence, however, was not discovered until 2021. Tr. 414. A previous DNA test conducted in 2018 was inconclusive. Tr. 414. It was only as a result of the advancement of technology that paternity could be established.

Mr. Johnson had no connection to the gun, and there was no evidence that he saw Bree Wiles on the night that she died. On June 17, 2021, the jury returned a guilty verdict charging Mr. Johnson with the murder of Bree Wiles.

ARGUMENT

The trial court erred by not granting Johnson’s motion for a directed verdict because the evidence adduced at trial was not sufficient to show more than a mere suspicion that Johnson was responsible for the murder of the victim.

At the close of the State’s case, trial counsel motioned the trial court for a directed verdict. Tr. 447. The trial court denied the motion. Tr. 458-59. The trial court erred because the evidence presented at trial was not sufficient to submit the case to the jury. As is well-established under South Carolina law, 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. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000). *See also State v. Williams*, 321 S.C.327, 332, 468 S.E.2d 626, 629 (1996). “The jury weighs the evidence but when there is an absence of evidence, it becomes the duty of the trial judge to direct a verdict...” *State v. Schrock*, 283 S.C. 129, 134, 322 S.E.2d 450, 452-53 (1984). Evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt. *Id.* at 133, 322 S.E.2d at 452 (citing *State v. Manis*, 214 S.C. 99, 51 S.E.2d 370 (1949)).

In *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2011), the South Carolina Supreme Court, analyzing the evidence in the light most favorable to the State, found that the State’s evidence only raised a suspicion of guilt that Bostick committed the crime. The State’s case consisted of the following evidence: (1) the decedent’s car keys, calculator, and other items from her home were found in the Bostick family’s burn pile; (2) the fire in the burn pile was accelerated with either kerosene or diesel fuel, and Bostick’s mother did not use those accelerants when she burned things in the pile; (3) Bostick had a pattern that matched gasoline on his shoes and gasoline was the accelerant used for the house fire; and (4) while the DNA from the blood found on Bostick’s jeans excluded about ninety-nine percent of the population, the blood could not be matched to the decedent’s DNA. Also, the weapon used to kill the decedent was never introduced into evidence, and there was no evidence introduced to show that Bostick had knowledge the decedent may have had money in the briefcase or if any money was, in fact, in the briefcase on that date. *Id.* at 141-42, 708 S.E.2d 778.

In *Schrock, supra*, a double-homicide case, the South Carolina Supreme Court reversed a conviction where the State did not offer any evidence that the defendant was at the scene of the crime, could not definitely testify that the footprint found at the scene was made by shoes allegedly

owned by the defendant, the State could not establish that cigarettes found at the scene had been smoked by the defendant, a hand print found at the scene was not the defendant's, and shoes presented in evidence were not identified by any witness who had seen the defendant actually wearing the shoes.

Also, in *State v. Arnold*, 361 S.C. 386, 605 S.E.2d 529 (2004), the South Carolina Supreme Court found evidence insufficient when the defendant's fingerprint on a coffee cup lid tab established that he was in the borrowed BMW on the same day the victim was last seen, and that the BMW was abandoned in Tennessee where the defendant stayed after his stay in Savannah, Georgia only raised a suspicion of guilt and was not sufficient to uphold the conviction. Also see *Mitchell, supra* at 409 ("The only evidence linking respondent to the burglary is the fingerprint").

In *State v. Pearson*, 410 S.C. 392, 764 S.E.2d 706 (Ct. App. 2014), this Court reversed the appellant's conviction due to insufficient evidence of guilt. In that case, the appellant's fingerprint was found at the scene of the attack, and law enforcement showed that appellant and his co-defendant had earlier worked at the victim's home. Law enforcement also showed appellant claimed he had never been to the victim's home before, but that he had actually performed a landscaping project at that location for 5 days. *See also State v. Bennett*, 408 S.C. 302, 758 S.E.2d 743 (Ct. App. 2014) (reversing conviction due to insufficient evidence when the evidence consisted of 1) finding appellant's fingerprint on a community room television set that may have been manipulated by the burglar in an attempt to remove the television, and 2) the appellant's DNA found below the space where a stolen television set sat in a computer room).

At most the evidence presented in this case showed that appellant knew the victim for a month before she informed him she was pregnant. He looked up information relating to terminating a pregnancy and it is undisputed the two had some disagreement about having a child.

The evidence also showed appellant had some question about the child's paternity. The evidence showed there were communications between appellant and a long-time friend of his, Robert Gentry. Gentry looked up information about guns including selling them and reporting them stolen. The evidence showed appellant sent a message to Gentry that said, "do it today, Fam! Happened two days ago." And the evidence showed appellant spoke to another romantic interest on the night the victim died (and it was their last communication) and that appellant's phone may have been in the vicinity of where the victim's body was found. What the evidence did not show is any connection between appellant and the gun, or that he had any reason to kill her. At the time the victim was killed, appellant had no idea he was the biological father of the child. It strains credulity to believe that appellant would murder the victim when he had only known her for a month and she claimed to be pregnant with his child. There were no discussions of child support or other obligations between the two. But additionally, the State did not show any connection between appellant and the murder weapon, or even that he was at the scene of the murder. The State's case against appellant was highly speculative and should not have been allowed to go to the jury. Respectfully, this Court should vacate appellant's conviction and sentence.

CONCLUSION

Respectfully, appellant asks this Court to vacate his conviction and sentence.

Respectfully submitted,

/s/ Elizabeth Franklin-Best
Elizabeth Franklin-Best, P.C.
2725 Devine Street
Columbia, South Carolina 29205
elizabeth@franklinbestlaw.com
(803) 445-1333

December 7, 2021.