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STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred in failing to grant a directed verdict of acquittal where there was insufficient evidence of guilt.

STATEMENT OF THE CASE

Appellant John L. McCombs was indicted by the Dorchester County grand jury during its November 2003 term for intimidation of court officials, jurors or witnesses. Appellant was tried before the Honorable James C. Williams, Jr., from July 13 – 14, 2004. The jury found appellant guilty and Judge Williams sentenced him to seven years in prison.

ARGUMENT

The trial judge erred in failing to grant a directed verdict of acquittal where there was insufficient evidence of guilt.

In reviewing the refusal to grant a directed verdict, this Court must determine whether there is any evidence, either direct or circumstantial, which reasonably tends to prove the guilt of the accused. State v. Creech, 314 S.C. 76, 441 S.E.2d 635 (Ct. App. 1993). “If the evidence is consistent with both innocence and guilt it cannot support a conviction.” United States v. Varoz, 740 F.2d 772, 775 (10th Cir. 1984). A directed verdict should be granted when there is an absence of competent evidence tending to prove the offense charged because the jury should not be allowed to decide the case based on conjecture, which raises only a mere suspicion of the defendant’s guilt. State v. Lyles-Gray, 328 S.C. 458, 492 S.E.2d 802 (Ct. App. 1997); State v. Barksdale, 311 S.C. 210, 428 S.E.2d 498 (Ct. App. 1993).

The alleged victim in this case is the Honorable Diane Goodstein, a sitting circuit court judge. Appellant received an unfavorable ruling from Judge Goodstein in a post-conviction relief action. The charges against appellant arose out of a letter appellant wrote to his post-conviction relief attorney, Donna Sands. Sands, who is a trusts and estates lawyer, turned the letter over to Judge Goodstein who, in turn, asked the solicitor’s office to investigate. SLED Officer John B. Garrison investigated, interviewing appellant while he was incarcerated. Appellant wrote Sands two other letters that, in combination, were used as the basis on which to prosecute appellant. The solicitor’s office chose to ask the Attorney General’s Office to try the case, and the Attorney General’s Office deployed three attorneys to do so.

Sands testified that she had only handled about six post-conviction relief matters in over a decade of practicing law. ROA p. 174, lines 13 – 14; p. 176, lines 1 – 2. Sands testified regarding three letters she had received from appellant. ROA pp. 359 to 363 (State’s exhibits 1 – 3). Admittedly, all three letters are ridiculously worded. The letters contain threats against Sands; however, it takes a stretch of imagination to seriously consider the third letter as containing a threat against Judge Goodstein. The essence of the letters is appellant’s unhappiness with Sands as his attorney. They include absurd accusations of her having sold him out; having taken \$500 blood money to do so; and of having stood in the way of his freedom.

The letter which contains the purported threat to Judge Goodstein in reality is a letter seeking to terminate Sands’s representation. The letter demands copies of documentation and concludes with the only reference to Judge Goodstein:

Do not do anything else, since you don’t know how to force a ruling out of that incipant[sic] judge, who made that personally biased comment from the bench, when she stated that she had no intention or ordering my release. I will not stop until I put you & her out of practice, since you personally acquire[sic] with her actions. Send me that file.

ROA p. 359 (State’s Exhibit 1). Sands testified extensively, but the proverbial bottom line is that Sands felt only professionally intimidated, in other words that appellant was accusing her of professional misconduct. When asked what she found intimidating other than the allegations of professional misconduct she stated “Nothing.” ROA p. 178, lines 15 – 17. The other letters, which predated the letter that formed the basis for the charge against appellant did include threats—but they were limited to threats against Sands. For example, the first letter chronologically stated “Thank you so much for selling me out . . . I hope to see you in Hell. . . . There is a price for everything, and you will find it particularly bitter.”;

“I am set to destroying you, just like pulling the wings off of a fly, do you understand this? For whom does the bell toll?” ROA pp. 360 to 361 (State’s Exhibit 2 and 3). Significantly, Sands clearly did not feel appellant presented an actual threat to her physical well being because she took no action until she received the third letter, which was received on March 28, 2001. The first letter was received over six months earlier, on October 13, 2000; the second letter was dated November 7. Although the hateful portions of the letters are indeed offensive, read as a whole the only conclusion is that appellant was dissatisfied with Sands’s performance as an attorney. For example, immediately following the only sentence implicating Judge Goodstein is the sentence “Send me that file.” ROA p. 359 (State’s Exhibit 1).

Next, former SLED officer John B. Garrison testified regarding his extremely irregular interview with appellant. Appellant was being held in maximum security at Lee County Correctional Institution at the time because he would not shave or get his hair cut. ROA p. 245, lines 3 – 8. The only rational reading of Garrison’s in camera and trial testimony is that he misled appellant when he went to visit him into thinking he was there to investigate appellant’s complaints against Sands and Judge Goodstein. Garrison carefully skirted this issue in his testimony, claiming in camera that he had adequately mirandized appellant by placing a Miranda form on the table on sort of a free-floating basis.

One of the few direct questions Garrison asked appellant was whether or not he was going to see Judge Goodstein when he got out of prison. According to Garrison, appellant stated "I don't know, I think I'll have to go see them." ROA p. 214, lines 16 – 17. Garrison ultimately admitted other than the single reference in the letter and the statement “I don’t know, I think I’ll have to go see them” there was nothing else in the way of a threat against

Judge Goodstein. ROA p. 226, line 18 – p. 227, line 12. Garrison also acknowledged “I cannot say that I found anything that constituted a violent offense through my investigation.” ROA p. 230, lines 2 – 3. Despite the dearth of evidence involving a realistic threat against Judge Goodstein, Garrison opined that he “absolutely” believed he should pursue an indictment against appellant. ROA p. 217, lines 20 – 23.

Judge Goodstein testified somewhat circularly that “After [she] spoke with Mr. Garrison and, and had an opportunity to look at some information that he had received from Ms. Sands, [she] was extremely concerned.” ROA p. 254, lines 16 – 18. Judge Goodstein recused herself from hearing a Rule 60 motion that Sands had filed. ROA p. 258, lines 12 – 25; p. 260, lines 6 – 12. Judge Goodstein, again conclusorily, stated that the fact that she recused herself impeded her in her ability to do her job and that she was “without question, certainly” threatened and intimidated. ROA p. 261, lines 16 – 21. Judge Goodstein, when asked on cross-examination what precisely she took to be a personal threat against her, ultimately stated that “The letters he wrote to Ms. Sands were absolutely vicious.” ROA p. 280, lines 1 – 14.

Although the evidence in this case arguably supports a charge pertaining to Ms. Sands as a victim of threats, the evidence is insufficient as a matter of law to support a charge under S.C. Code Ann. § 16-9-340 (Supp. 2004) regarding Judge Goodstein. Even the threats against Ms. Sands must be taken in context: They were no doubt inappropriate yet commonplace venting of frustration at an attorney by a client unhappy with an unfavorable result.

In reviewing a motion for a directed verdict of acquittal, the trial court is concerned with the existence or nonexistence of evidence, not its weight. State v. Morgan, 282 S.C.

409, 319 S.E.2d 335 (1984). Moreover, the judge must view the evidence in a light most favorable to the State. State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984). Here, even viewed in the light most favorable to the state there was insufficient evidence that appellant's letter to Sands, combined with the statement he made to a law enforcement official, rises to the level of a threat or force as contemplated by S.C. Code Ann. § 16-9-340 (Supp. 2004); see also State v. Lyles-Gray, 328 S.C. 458, 464, 492 S.E.2d 802, 805 (Ct. App. 1997) ("section 16-9-340 principally applies to those acts that use threat or force against court officials and members of administrative agencies) (emphasis added). The trial judge erred in failing to grant a directed verdict of acquittal.

CONCLUSION

Appellant is entitled to have his conviction and sentence reversed.

Respectfully submitted,

Tara S. Taggart
Assistant Appellate Defender

ATTORNEY FOR APPELLANT.

This 29th day of September, 2005.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

September 29th, 2005

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County

James C. Williams, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN L. MCCOMBS,

APPELLANT

FINAL BRIEF OF APPELLANT

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STATE OF SOUTH CAROLINA
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THE STATE,

RESPONDENT,

V.

JOHN L. MCCOMBS,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, this 29th day of September, 2005.

Tara S. Taggart
Assistant Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 29th day of September, 2005.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014 .

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September 29, 2005

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Re: The State v. John L. McCombs

Dear Salley:

Enclosed are two copies of the Final Brief of Appellant in the above-entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

Tara S. Taggart
Assistant Appellate Defender

TST/lec

Enclosure

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September 29, 2005

Mr. John L. McCombs, #303571
Kirkland Correctional Institution
4344 Broad River Road
Columbia, SC 29210

Re: Your appeal

Dear Mr. McCombs:

Enclosed is a copy of the Final Brief of Appellant in your case, which I have filed with the South Carolina Court of Appeals.

I also wanted to let you know that I will be leaving Appellate Defense on September 30th. Your case will be reassigned to one of the other attorneys. I wish you the best of luck.

Sincerely,

Tara S. Taggart
Assistant Appellate Defender

TST/lec

Enclosure