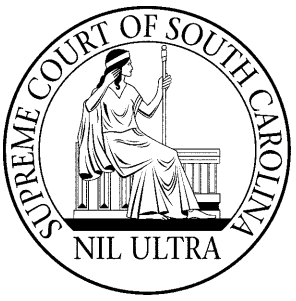

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 42
September 28, 2009
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

Eugene Jamison and Delores Isaac, individually and as Personal Representative of the Estate of Virnell Isaac, Petitioners,

v.

Ford Motor Company, Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Berkeley County
R. Markley Dennis, Jr., Circuit Court Judge

Opinion No. 26727
Heard September 15, 2009 – Filed September 28, 2009

DISMISSED AS IMPROVIDENTLY GRANTED

James E. Carter, of Savannah, GA,; Samuel K. Allen, of Anastopoulo and Clone, of Charleston; and Stephanie P. McDonald, of Senn, McDonald & Leinbach, of Charleston, for Petitioners.

J. Kenneth Carter, Jr. and Curtis L. Ott, both of Turner, Padget, Graham & Laney, of Columbia, for Respondent.

PER CURIAM: After careful consideration, the writ of certiorari is

DISMISSED AS IMPROVIDENTLY GRANTED.

TOAL, C.J., WALLER, PLEICONES, BEATTY, JJ., and Acting Justice James E. Moore, concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Ivan N. Walters, Respondent.

Opinion No. 26728
Submitted August 24, 2009 – Filed September 28, 2009

DEFINITE SUSPENSION

Lesley M. Coggiola, Disciplinary Counsel, and Susan B. Hackett, Staff Attorney, both of Columbia, for Office of Disciplinary Counsel.

Desa A. Ballard, of West Columbia, for respondent.

PER CURIAM: In this attorney disciplinary matter, the Office of Disciplinary Counsel (ODC) and respondent have entered into an Agreement for Discipline by Consent pursuant to Rule 21, RLDE, Rule 413, SCACR. In the agreement, respondent admits misconduct and consents to a definite suspension from the practice of law for twelve months. Respondent requests that the suspension be made retroactive to the date of his interim suspension, June 27, 2008. In the Matter of Walters, 378 S.C. 596, 663 S.E.2d 482 (2008). We accept the agreement and impose a definite suspension of twelve months, retroactive to the date of respondent's interim suspension. The facts, as set forth in the agreement, are as follows.

FACTS

Matter I

From April 2003 through October 2004, respondent committed a felony in violation of 18 U.S.C. § 4 in that, although he had knowledge of the actual commission of bank fraud, he concealed the information by failing to inform a judge or other person in authority of the felony. The Acting United States Attorney charged respondent by Information and respondent pled guilty on June 18, 2008. On October 17, 2008, respondent was sentenced to twenty-four (24) months probation, performance of 100 hours of community service, and participation in the home confinement program with electronic monitoring for a period of four (4) months. In addition, respondent was ordered to pay a fine of $3,000 and a special assessment of $100.

Respondent self-reported this matter to ODC.

Matter II

Respondent completed a series of closings on the same piece of property. The last of the closings was for Mr. and Mrs. Doe who were the buyers of the property. At the time of that closing, the mortgage on the property was to be paid from the closing proceeds, however, it was not satisfied of record and no release was executed and filed. This failure complicated Mr. and Mrs. Doe's attempt to sell the property at a later date. Respondent claims he did not personally receive notice of the issues regarding the property until after Mr. and Mrs. Doe obtained the satisfactions they required.

Respondent admits he had previously represented a prior purchaser of the same property and that he failed to insure that the proper releases and/or satisfactions were filed by the lender after the July 7, 2005 closing.

LAW

Respondent admits he has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.1 (lawyer shall provide competent representation); Rule 1.4 (lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information); Rule 8.4(a) (lawyer shall not violate Rules of Professional Conduct); Rule 8.4(b) (lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects); and Rule 8.4(d) (lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation). He further admits that his misconduct constitutes grounds for discipline under Rule 413, RLDE, specifically Rule 7(a)(1) (it shall be ground for discipline for lawyer to violate Rules of Professional Conduct or any other rules of this jurisdiction regarding professional conduct of lawyers), Rule 7(a)(4) (it shall be ground for discipline for lawyer to be convicted of serious crime or crime of moral turpitude), and Rule 7(a)(5) (it shall be ground for discipline for lawyer to engage in conduct tending to pollute the administration of justice or to bring the courts or the legal profession into disrepute or conduct demonstrating an unfitness to practice law).

CONCLUSION

We accept the Agreement for Discipline by Consent and impose a definite suspension of twelve months from the practice of law, retroactive to the date of respondent's interim suspension. Within fifteen days of the date of this opinion, respondent shall file an affidavit with the Clerk of Court showing that he has complied with Rule 30, RLDE, Rule 413, SCACR.[1]

[1] Respondent shall not file a Petition for Reinstatement until he has completed all conditions of his sentence. See Rule 33, RLDE, Rule 413, SCACR.

DEFINITE SUSPENSION.

TOAL, C.J., WALLER, PLEICONES, BEATTY and KITTREDGE, JJ., concur.

The Supreme Court of South Carolina

RE: In the Matter of William E. Walsh

ORDER

On November 5, 2008, this Court granted the Office of Disciplinary Counsel's petition to place Respondent on interim suspension. Respondent has now filed a petition requesting that we lift interim suspension; ODC takes no position regarding Respondent's request. We hereby grant the petition and lift interim suspension.

s/ Jean H. Toal C.J.

s/ John H. Waller, Jr. J.

s/ Costa M. Pleicones J.

s/ John W. Kittredge J.

Justice Donald W. Beatty not participating

Columbia, South Carolina
September 22, 2009

The Supreme Court of South Carolina

In the Matter of John W. Harte, Jr., Respondent.

ORDER

By an information filed on September 16, 2009, respondent was charged with conspiracy to commit mail fraud and money laundering in violation of 18 U.S.C. § 371, 18 U.S.C. § 981(a)(1)(C), 18 U.S.C. § 982(a)(1), and 28 U.S.C. § 2461(c). As a result, the Office of Disciplinary Counsel (ODC) has filed a petition asking this Court to place respondent on interim suspension pursuant to Rule 17, RLDE, Rule 413, SCACR. ODC states that respondent does not oppose issuance of the interim suspension.

IT IS ORDERED that respondent's license to practice law in this state is suspended until further order of the Court.

s/ Costa M. Pleicones J.
FOR THE COURT

Columbia, South Carolina

September 22, 2009

The Supreme Court of South Carolina

In the Matter of J. Fitzgerald O'Connor, Jr., Respondent.

ORDER

On September 16, 2009, respondent was indicted on charges of conspiracy to commit mail fraud and money laundering in violation of 18 U.S.C. § 1001(a), 18 U.S.C. § 1341, 18 U.S.C. § 1503(a), 18 U.S.C. § 1503(b)(3), 18 U.S.C. § 1956(h), 18 U.S.C. § 1957, 18 U.S.C. § 2, 18 U.S.C. § 981(a)(1)(C), 18 U.S.C. § 982(a)(1), and 28 U.S.C. § 2461(c). As a result, the Office of Disciplinary Counsel (ODC) has filed a petition asking this Court to place respondent on interim suspension pursuant to Rule 17, RLDE, Rule 413, SCACR, and requesting the Court appoint an attorney to protect respondent's clients' interests pursuant to Rule 31, RLDE, Rule 413, SCACR. ODC states that respondent does not oppose issuance of the interim suspension.

IT IS ORDERED that respondent's license to practice law in this state is suspended until further order of the Court.

IT IS FURTHER ORDERED that Randolph Epting, Esquire, is hereby appointed to assume responsibility for respondent's client files, trust account(s), escrow account(s), operating account(s), and any other law office account(s) respondent may maintain. Mr. Epting shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of respondent's clients. Mr. Epting may make disbursements from respondent's trust account(s), escrow account(s), operating account(s), and any other law office account(s) respondent may maintain that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating accounts of respondent, shall serve as an injunction to prevent respondent from making withdrawals from the account(s) and shall further serve as notice to the bank or other financial institution that Randolph Epting, Esquire, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that Randolph Epting, Esquire, has been duly appointed by this Court and has the authority to receive

respondent's mail and the authority to direct that respondent's mail be delivered to Mr. Epting's office.

This appointment shall be for a period of no longer than nine months unless request is made to this Court for an extension.

IT IS SO ORDERED.

s/ Costa M. Pleicones J.
FOR THE COURT

Columbia, South Carolina

September 23, 2009

The Supreme Court of South Carolina

In the Matter of J. Fitzgerald O'Connor, Jr., Respondent.

ORDER

By order dated September 23, 2009, respondent was placed on interim suspension pursuant to Rule 17, RLDE, Rule 413, SCACR, and Randolph Epting, Esquire, was appointed attorney to protect respondent's clients' interests pursuant to Rule 31, RLDE, Rule 413, SCACR. Mr. Epting is hereby relieved of his appointment as attorney to protect respondent's clients' interests.

IT IS ORDERED that Jeff Zeigler Brooker, III, Esquire, is hereby appointed to assume responsibility for respondent's client files, trust account(s), escrow account(s), operating account(s), and any other law office account(s) respondent may maintain. Mr. Brooker shall take action as required by Rule 31, RLDE, to protect the interests of respondent's clients. Mr. Brooker may make disbursements from respondent's trust account(s), escrow account(s), operating account(s), and any other law office account(s) respondent may maintain that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating accounts of respondent, shall serve as an injunction to prevent respondent from making withdrawals from the account(s) and shall further serve as notice to the bank or other financial institution that Jeff Zeigler Brooker, III, Esquire, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that Jeff Zeigler Brooker, III, Esquire, has been duly appointed by this Court and has the authority to receive respondent's mail and the authority to direct that respondent's mail be delivered to Mr. Brooker's office.

This appointment shall be for a period of no longer than nine months unless request is made to this Court for an extension.

IT IS SO ORDERED.

s/ Costa M. Pleicones J.
FOR THE COURT

Columbia, South Carolina

September 24, 2009

The Supreme Court of South Carolina

In the Matter of Michael D. Shavo, Respondent.

ORDER

On September 16, 2009, respondent was indicted on charges of conspiracy to commit mail fraud and money laundering and making false statements to law enforcement in violation of 18 U.S.C. § 1001(a), 18 U.S.C. § 1341, 18 U.S.C. § 1503(a), 18 U.S.C. § 1503(b)(3), 18 U.S.C. § 1956(h), 18 U.S.C. § 1957, 18 U.S.C. § 2, 18 U.S.C. § 981(a)(1)(C), 18 U.S.C. § 982(a)(1), and 28 U.S.C. § 2461(c). As a result, the Office of Disciplinary Counsel has filed a petition asking this Court to place respondent on interim suspension pursuant to Rule 17, RLDE, Rule 413, SCACR, and requesting the Court appoint an attorney to protect respondent's clients' interests pursuant to Rule 31, RLDE, Rule 413, SCACR. Respondent has not filed a return.

IT IS ORDERED that respondent's license to practice law in this state is suspended until further order of the Court.

IT IS FURTHER ORDERED that Robert Bethea, Esquire, is hereby appointed to assume responsibility for respondent's client files, trust account(s), escrow account(s), operating account(s), and any other law office account(s) respondent may maintain. Mr. Bethea shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of respondent's clients. Mr. Bethea may make disbursements from respondent's trust account(s), escrow account(s), operating account(s), and any other law office account(s) respondent may maintain that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating accounts of respondent, shall serve as an injunction to prevent respondent from making withdrawals from the account(s) and shall further serve as notice to the bank or other financial institution that Robert Bethea, Esquire, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that Robert Bethea, Esquire, has been duly appointed by this Court and has the authority to receive

respondent's mail and the authority to direct that respondent's mail be delivered to Mr. Bethea's office.

This appointment shall be for a period of no longer than nine months unless request is made to this Court for an extension.

IT IS SO ORDERED.

s/ Costa M. Pleicones J.
FOR THE COURT

Columbia, South Carolina

September 22, 2009

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Kevin Cornelius Odems, Appellant.

Appeal From York County
Lee S. Alford, Circuit Court Judge

Opinion No. 4620
Heard June 23, 2009 – Filed September 24, 2009

AFFIRMED

Deputy Chief Attorney for Capital Appeals Robert M. Dudek, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, Senior Assistant Attorney General Norman Mark

Rapoport, all of Columbia; and Solicitor Kevin Scott Brackett, of York, for Respondent.

KONDUROS, J.: Kevin Cornelius Odems appeals his convictions and sentences for first-degree burglary, grand larceny, malicious injury to an electric utility system, and criminal conspiracy, arguing the trial court erred in denying his motions for directed verdict. We affirm.

FACTS

On March 21, 2005, Margaret Burns was driving home from York and noticed a brown car turning into her cousin's driveway. Burns drove about a mile past the house and telephoned law enforcement while returning to a parking lot across the street from the house to watch the strange car. Burns observed two men knocking at the door of her cousin's house. Later, she saw one man run from the house to the brown car, place something in the trunk, and close the lid. When the brown car left, Burns attempted to follow it, but she could no longer see it once she reached the road.

Shortly after Burns' call, a sheriff's deputy spotted a brown Cadillac with North Carolina license plates near York. He pulled the car over, and the driver exited the car. When the deputy drew his weapon and ordered the driver back into the car, the driver behaved erratically, alternately re-entering the car, and then re-exiting the car as he talked to the other two men in the car and reached into the floorboard. The three men then jumped out of the car and ran into the woods.

A short time later, Odems knocked at the back door of Donna Beane's home and said he needed a ride. Beane did not know Odems but handed him her telephone so he could call someone to pick him up. Odems did not use the phone and instead instructed Beane that if the police arrived, she should tell them he was her boyfriend. As Beane refused and began moving away from Odems, police officers arrived. The officers took Odems into custody,

as well as Derrick Dawkins and Frederick Bell, who were found hiding in the backyard.[1]

Dawkins and Bell pled guilty to burglary. Odems was tried and convicted of first-degree burglary, grand larceny, malicious injury to an electric utility system, and criminal conspiracy. He received an aggregate sentence of fifteen years' imprisonment. This appeal followed.

STANDARD OF REVIEW

In reviewing a denial of a motion for a directed verdict, an appellate court must review the evidence in the light most favorable to the State. State v. Venters, 300 S.C. 260, 264, 387 S.E.2d 270, 272 (1990). If any direct evidence or any substantial circumstantial evidence reasonably tends to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury. State v. Weston, 367 S.C. 279, 292-93, 625 S.E.2d 641, 648 (2006).

LAW/ANALYSIS

Odems asserts the trial court erred in failing to direct a verdict on each of the four charged offenses. According to Odems, the State produced no evidence linking him to the burglary or proving he had any knowledge of the burglary. In support of his argument, Odems points to Dawkins' testimony providing Odems was not present for the burglary and knew nothing of it. Odems argues the evidence only proved he was riding in the vehicle with Dawkins and Bell a short time after the burglary. We disagree.[2]

---

[1] Odems, Dawkins, and Bell are all cousins.

[2] All four issues on appeal pertain to the propriety of the trial court's refusal to direct a verdict, differing only in the offense named. The facts supporting the State's case against Odems as to each issue are also the same. Consequently, we address all four issues together.

When considering a motion for a directed verdict, a trial court is concerned only with the existence of evidence, not its weight. State v. Venters, 300 S.C. 260, 264, 387 S.E.2d 270, 272 (1990). Grant of a defense motion for directed verdict of acquittal is proper only "if there is a failure of competent evidence tending to prove the charge." Rule 19(a), SCRCrimP; State v. Jenkins, 278 S.C. 219, 222, 294 S.E.2d 44, 46 (1982). A trial court must submit the case to the jury if any direct or substantial circumstantial evidence has been presented that reasonably tends to prove the defendant's guilt or from which his guilt may be fairly and logically deduced. State v. Ballington, 346 S.C. 262, 271-72, 551 S.E.2d 280, 285 (Ct. App. 2001). However, the trial court should grant a directed verdict motion when the evidence presented merely raises a suspicion of guilt. State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004). Suspicion implies a belief or opinion as to guilt based upon facts or circumstances not amounting to proof, but the trial court is not required to find the evidence infers guilt to the exclusion of any other reasonable hypothesis. Id.

"Flight from prosecution is admissible as evidence of guilt." State v. Al-Amin, 353 S.C. 405, 413, 578 S.E.2d 32, 36 (Ct. App. 2003); see also State v. Ballenger, 322 S.C. 196, 200, 470 S.E.2d 851, 854 (1996) (stating flight "is at least some evidence of guilt"); State v. Freely, 105 S.C. 243, 250, 89 S.E. 643, 645 (1916) ("The flight of one charged with crime has always been held to be some evidence tending to prove guilt."). Flight can constitute evidence of a defendant's guilty knowledge and intent. See State v. Beckham, 334 S.C. 302, 315, 513 S.E.2d 606, 612 (1999). "Flight, when unexplained, is admissible as indicating consciousness of guilt, for it is not to be supposed that one who is innocent and conscious of that fact would flee." State v. Crawford, 362 S.C. 627, 635, 608 S.E.2d 886, 890 (Ct. App. 2005). "The critical factor to the admissibility of evidence of flight is whether the totality of the evidence creates an inference that the defendant had knowledge that he was being sought by the authorities." Id. at 636, 608 S.E.2d at 891.

"Flight or evasion of arrest is an issue for the jury to consider." State v. Walker, 366 S.C. 643, 655, 623 S.E.2d 122, 128 (Ct. App. 2005). Flight evidence is relevant when the flight and the offense charged are connected.

State v. Pagan, 369 S.C. 201, 209, 631 S.E.2d 262, 266 (2006); cf. United States v. Beahm, 664 F.2d 414, 419-20 (4th Cir. 1981) (finding evidence of flight inadmissible when "a defendant flees after 'commencement of an investigation' unrelated to the crime charged, or of which the defendant was unaware").

Admittedly, the evidence against Odems was entirely circumstantial. Less than half an hour after the burglary, he was located in the getaway car with the admitted burglars and the stolen goods. He fled from law enforcement, and he asked an uninvolved person to lie for him. No evidence directly linked Odems to the crimes, and the State relied heavily on inferences drawn from Odems' flight and constructive possession of stolen goods to convict him. However, viewing the evidence in the light most favorable to the State, a jury could find Odems was present at the scene of the burglary and participated in some way.

In support of his argument the trial court erred in denying his directed verdict motions, Odems presents the following evidence. The sole eyewitness reported and described only two men at the scene. A forensic investigator testified the twelve sets of fingerprints she collected in the car and on the stolen goods included both Dawkins' and Bell's but not Odems'. Both Dawkins and Bell testified during the State's case-in-chief, admitting they entered guilty pleas stemming from the burglary. Dawkins testified he agreed to give Odems a ride home only after committing the burglary and stopping to refuel the car. He stated Odems was not present during the burglary and knew nothing about it. In addition, Dawkins testified that just before the three men jumped out of the car and ran from police, he told Odems his driver's license was suspended. By contrast, Bell refused to answer when asked what happened on the day of the burglary, what happened to the home's front door and electric meter, and how Odems came to be in the car when the three men fled from police. Bell simply testified he was with Dawkins when the home was burglarized, but when they were later stopped by police, Odems was with them. He admitted he had never given police a statement implicating Odems. However, weighing these facts against those supporting the State's argument invites us to take an impermissible step into

the jury's shoes. The propriety of directing a verdict of acquittal relies solely on the existence, and not the weight, of evidence of guilt. See Venters, 300 S.C. at 264, 387 S.E.2d at 272.

Crawford is somewhat similar to the present case. 362 S.C. at 631, 608 S.E.2d at 888. In Crawford, police stopped a car as it exited the parking lot of a rental store at night with its headlights turned off. Id. at 632, 608 S.E.2d at 888-89. The defendant was in the car and fled the scene. Id. One of the other passengers told police the defendant had participated in stealing tools from the store. Id. at 631-32, 608 S.E.2d at 888. At trial, that passenger instead testified he was focused on a third passenger stealing the tools and had not paid attention to the defendant. Id. at 632, 608 S.E.2d at 889. The third passenger testified he had acted alone in stealing the tools; although the defendant and other passenger were there, they had no idea he was planning to break into the store. Id. This court upheld the denial of a directed verdict on the charge of criminal conspiracy. Id. at 645-46, 608 S.E.2d at 896.[3]

Both the law governing directed verdicts and our standard of review compel this court to consider only whether the State presented sufficient evidence from which a jury could fairly and logically deduce Odems' guilt. South Carolina jurisprudence makes clear flight is at least some evidence of guilt. Combined with Odems' presence in the car with the stolen goods and admitted burglars, Odems' flight was sufficient to constitute substantial circumstantial evidence of all four offenses. Therefore, the trial court did not err in finding the State presented sufficient evidence to send the case to the jury. Accordingly, the trial court is

[3] While we are aware of the supreme court's recent reversal of the denial of a directed verdict in a drug trafficking case, we do not find the facts in that case comparable to those in the present case. See State v. Hernandez, 382 S.C. 620, 677 S.E.2d 603 (2009) (finding although defendants' forming part of three-vehicle caravan with tractor trailer containing drugs may have been suspicious and federal agents' testimonies may support inference defendants' had knowledge of drugs, this evidence alone does not constitute substantial circumstantial evidence defendants had knowledge of drugs, a required element for trafficking).

AFFIRMED.

HEARN, C.J., and SHORT, J., concur.