STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From York County
The Honorable William H. Seals, Jr., Circuit Court Judge
On Petition for Writ of Certiorari to the Court of Appeals
Appellate Case No. 2009-144086

THE STATE,

Petitioner,

vs.

FRANCIS LARMAND,

Respondent.

APPENDIX

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Francis Larmand, Appellant.

Appellate Case No. 2009-144086

Appeal From York County
William H. Seals, Jr., Circuit Court Judge

Opinion No. 5097
Heard November 29, 2012 – Filed March 13, 2013

REVERSED

C. Rauch Wise, of C. Rauch Wise Attorney at Law, of Greenwood, and John D. Rhea, of McKinney, Givens, Tucker & Rhea, of Rock Hill, for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney General John W. McIntosh, Senior Assistant Deputy Attorney General Salley W. Elliott, and Assistant Attorney General Deborah R.J. Shupe, all of Columbia, and Solicitor Kevin S. Brackett, of York, for Respondent.

PER CURIAM: Francis Larmand appeals his convictions for second-degree lynching, conspiracy, and pointing and presenting a firearm. He argues the trial court erred in: (1) submitting his written charge to the jury; (2) not directing a verdict on the charges of lynching, conspiracy, and pointing and presenting a firearm; and (3) charging the jury that it may infer all persons who are present as

members of a mob when an act of violence is committed are guilty as principals. We reverse.

FACTS

Ryan Lochbaum worked for Larmand's wife, Kerriann, at Pop-A-Lock from 2005 to October 2008, when he was terminated.[1] Lochbaum filed for unemployment benefits; however, Kerriann testified against him, and he was denied benefits. Kerriann became suspicious that Lochbaum was intercepting calls from her business and reaching her customers before she could respond, so she and Larmand initiated a bogus call for locksmith services ("a mystery shopper call") to try to catch him answering the call.[2] In this particular instance, Larmand drove his truck to Knight's Stadium in Fort Mill, and Leo Lemire, Kerriann's brother, went with him. Kerriann placed a call to the central Pop-A-Lock dispatch in Lafayette, Louisiana, requesting to have a key made for someone who had locked his keys in his car at the stadium. However, no one responded to the call to provide locksmith services. Larmand then decided to drive to Lochbaum's house in Rock Hill to see if Lochbaum had a Pop-A-Lock magnet on his car or if any Pop-A-Lock employees were at his house.

Lochbaum testified he was sitting in his van in his driveway when Larmand walked up to his house and asked to talk to him. Lochbaum testified that as they spoke, he saw Lemire "walking toward [him] at a good clip, carrying a very large handgun." Lemire said to Lochbaum, "This is what you get when you f**k with my family," and pulled the hammer on the gun. Lochbaum asserted he reached for the gun, and as they were struggling, Larmand grabbed him around his neck. Eventually, Lochbaum got the gun from Lemire, and Larmand and Lemire ran off. Lochbaum's knuckles and hands were cut in the struggle to get control of the gun, but he did not sustain any other injuries.

Larmand testified he did not know Lemire had a gun with him and did not conspire with him to point a firearm at Lochbaum. He testified he parked down the street from Lochbaum's house "to keep [Lemire] out of it [because] [h]e didn't need to be involved," and he told Lemire to stay in the truck. He further testified he never told Lemire about Lochbaum or that he thought Lochbaum was stealing business

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[1] Pop-A-Lock is part of a national locksmith franchise company that provides roadside assistance and locksmith services for automotive customers.

[2] Kerriann testified a "mystery shopper call" is a technique used in the locksmith industry to detect call interception.

from Kerriann. Larmand said he told Lochbaum to leave Kerriann's company alone, and he admitted he was "agitated." He stated Lochbaum asked him why they were contesting his right to unemployment benefits. Larmand told him to "man up and get a job," and he started to walk back to his truck. As he was walking away with his back to Lochbaum, he heard Lemire yell, "Don't f**k with my family." He then saw Lemire and Lochbaum struggling with a gun. Larmand put one arm around Lochbaum to pull him off Lemire. Larmand testified Lochbaum took the gun from Lemire and said, "Get the hell out of here." Larmand testified he and Lemire then walked back to Larmand's truck and drove away.

Lemire testified Larmand did not ask him to bring the gun and did not know he had a gun with him. He stated Larmand asked him to go on a sting with him. They met at Larmand's house, and while Larmand was inside, Lemire grabbed his belongings from his car, including his gun, and got into Larmand's daughter's truck. He put the gun under the passenger seat. He claimed they did not talk about Lochbaum the entire night. After no one responded to the mystery-shopper call, Larmand asked Lemire if he would ride to a house with him to see if any of the cars had a Pop-A-Lock magnet or if any Pop-A-Lock employees were there. When they got to Lochbaum's house, Larmand told Lemire he was going to talk to someone and for him to wait in the truck. He denied that Larmand asked him to pull a gun on Lochbaum. When he heard someone yelling, Lemire got out of the truck and grabbed his gun. He walked to Lochbaum's house because he wanted to make sure Larmand was okay. He approached Lochbaum while holding the gun in the air and told him, "Don't f**k with my family." He testified he told Lochbaum not to mess with his family because he "thought they were gonna jump [Larmand] and beat the snot out of him." Lochbaum grabbed for the gun, and Lemire fell to the ground with Lochbaum on top of him. Lemire claimed he relinquished the gun when he was told the police were coming. He admitted the gun was loaded, but denied attempting to fire it. Lochbaum took the gun and pointed it at them. Larmand and Lemire then walked back to the truck and left.

Bystanders called the police, who stopped Larmand after he left the scene. During the traffic stop, Lemire was arrested for pointing and presenting a firearm and was taken into custody. Larmand was not arrested at that time and was allowed to leave. Larmand was arrested the next day when he went to arrange bail for Lemire. Larmand was charged with second-degree lynching, conspiracy, and pointing and presenting a firearm. Lemire was charged with the same offenses.

A trial was held, and at the close of the State's case, Larmand made a motion requesting the court require the State to elect between proceeding on the

conspiracy charge or the lynching charge. The court denied the motion. Larmand moved for a directed verdict on the charge of pointing and presenting a firearm, arguing the State presented no evidence he conspired with Lemire to have the gun, bring the gun, or brandish the gun. He also made a motion for a directed verdict on the charge of lynching, arguing there was no premeditation under the circumstances of the case. The court denied the motions. At the close of the defense's case, Larmand renewed his motions for directed verdict, which the court denied again.

The jury found Larmand guilty of conspiracy, second-degree lynching, and pointing and presenting a firearm.[3] The court sentenced him to ten years imprisonment for second-degree lynching and concurrent sentences of five years for criminal conspiracy and pointing and presenting a firearm. The court denied Larmand's motion for a new trial. This appeal followed.

STANDARD OF REVIEW

In criminal cases, this court sits to review errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous. *State v. Wilson*, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001). Thus, on review, the appellate court is limited to determining whether the trial court abused its discretion. *Id.* at 6, 545 S.E.2d at 829. An abuse of discretion occurs when the court's decision is unsupported by the evidence or controlled by an error of law. *State v. Garrett*, 350 S.C. 613, 619, 567 S.E.2d 523, 526 (Ct. App. 2002). A motion for directed verdict is properly denied when there is any evidence, direct or circumstantial, that reasonably tends to prove the defendant's guilt. *State v. Brandt*, 393 S.C. 526, 542, 713 S.E.2d 591, 599 (2011). "When reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State." *Id.* "A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." *Id.*

LAW/ANALYSIS

I. Lynching

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[3] Lemire was tried at the same time, and the jury also found him guilty of second-degree lynching, conspiracy, and pointing and presenting a firearm. Lemire filed a separate appeal.

Larmand argues the trial court erred in not directing a verdict on the charge of lynching because the State failed to prove a premeditated intent to commit an act of violence upon another person. We agree.

At the time of Larmand's conviction for second-degree lynching, section 16-3-220 of the South Carolina Code defined second-degree lynching as "[a]ny act of violence inflicted by a mob upon the body of another person and from which death does not result . . . ." S.C. Code Ann. § 16-3-220 (2003).[4] Section 16-3-230 defined a mob as "the assemblage of two or more persons, without color or authority of law, for the premeditated purpose and with the premeditated intent of committing an act of violence upon the person of another." S.C. Code Ann. § 16-3-230 (2003).[5] "Although '[t]he common intent to do violence' may be formed before or during the assemblage, to sustain a conviction for lynching the State must produce at least some evidence of premeditation." *State v. Smith*, 352 S.C. 133, 137, 572 S.E.2d 473, 475 (Ct. App. 2002) (quoting *State v. Barksdale*, 311 S.C. 210, 214, 428 S.E.2d 498, 500 (Ct. App. 1993)). "[T]he premeditated purpose and intent underlying a charge of lynching cannot be spontaneous." *Id.* at 137, 572 S.E.2d at 475.

At the close of the State's case, Larmand moved for a directed verdict on the charge of lynching, arguing there was no premeditation under the circumstances of this case. The State argued it presented the following evidence of premeditation: Larmand and Lemire drove together to Lochbaum's house; at midnight; were uninvited; parked down the street from Lochbaum's house; wore dark clothing[6]; and separately approached Lochbaum's house on foot with Lemire carrying a loaded gun pointed at Lochbaum. The court denied Larmand's motion, finding it was an issue for the jury.

Larmand testified he told Lemire to stay in the vehicle while he went to talk to Lochbaum, and he was not aware that Lemire had a gun with him at the time. He stated he was walking back to his vehicle when he heard Lemire yell at Lochbaum. Lemire testified Larmand instructed him to stay in the vehicle, did not ask him to bring a gun, did not know he had a gun with him, and did not ask him to pull a gun on Lochbaum or harm him in any way. Lemire further testified he got out of the

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[4] This section was repealed in 2010 by 2010 Act No. 273, § 5, eff. June 2, 2010.

[5] This section also was repealed by 2010 Act No. 273, § 5.

[6] Larmand and Lemire were both wearing dark clothing. Larmand testified he was wearing dark clothing because he works on vehicles, and Lemire testified he usually wears all black.

vehicle when he heard someone yelling, and he wanted to make sure Larmand was not in any danger. Additionally, none of the State's witnesses testified they saw any signs of any premeditated intent between Larmand and Lemire to harm Lochbaum.

While we note the State may demonstrate the intent element in a lynching case through testimonial evidence or circumstantial inferences, viewing the evidence and all reasonable inferences in the light most favorable to the State, we find the record devoid of any evidence, direct or circumstantial, tending to prove Larmand and Lemire acted with the premeditated purpose and intent required to sustain a conviction. *See Smith*, 352 S.C. at 138-39, 572 S.E.2d at 476 (finding the record devoid of any evidence, direct or circumstantial, tending to prove the co-defendants acted with the premeditated purpose and intent required to sustain a conviction and reversing Smith's conviction for second-degree lynching); *see also State v. Hernandez*, 382 S.C. 620, 625-26, 677 S.E.2d 603, 605-06 (2009) (determining the State failed to present any evidence such as acts, declarations, or specific conduct to support the inference that the petitioners had knowledge of the contents of the tractor-trailer; therefore, the conclusion that the petitioners had knowledge of the drugs in the tractor trailer was mere speculation, and the trial court erred in denying the motion for a directed verdict); *State v. Arnold*, 361 S.C. 386, 390, 605 S.E.2d 529, 531 (2004) (holding the trial court should grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty). Therefore, we find the trial court erred in denying Larmand's motion for directed verdict as to the charge of lynching.

II. Conspiracy

Larmand argues the trial court erred in not directing a verdict on the charge of conspiracy because the State failed to prove any facts that would reasonably support an agreement between himself and Lemire to inflict an act of violence upon Lochbaum or point a firearm at Lochbaum. We agree.

Section 16-17-410 of the South Carolina Code defines conspiracy as "a combination between two or more persons for the purpose of accomplishing an unlawful object or lawful object by unlawful means." S.C. Code Ann. § 16-17-410 (2003). In *State v. Fleming*, 243 S.C. 265, 274, 133 S.E.2d 800, 805 (1963) (citations omitted), the South Carolina Supreme Court explained conspiracy:

> It need not be shown that either the object or the means agreed upon is an indictable offense in order to establish

> a criminal conspiracy. It is sufficient if the one or the other is unlawful. Nor need a formal or express agreement be established. A tacit, mutual understanding, resulting in the willful and intentional adoption of a common design by two or more persons is sufficient, provided the common purpose is to do an unlawful act either as a means or an end. Although the offense of conspiracy may be complete without proof of overt acts, such "acts may nevertheless be shown, since from them an inference may be drawn as to the existence and object of the conspiracy. It sometimes happens that the conspiracy can be proved in no other way." "To establish sufficiently the existence of the conspiracy, proof of an express agreement is not necessary, and direct evidence is not essential, but the conspiracy may be sufficiently shown by circumstantial evidence and the conduct of the parties. The circumstantial evidence and the conduct of the parties may consist of concert of action."

"Under South Carolina law, no overt acts need be shown to establish a conspiracy. The crime consists of the agreement or mutual understanding." *State v. Horne*, 324 S.C. 372, 381, 478 S.E.2d 289, 294 (Ct. App. 1996). "Once a conspiracy has been established, evidence establishing beyond a reasonable doubt the connection of a defendant to the conspiracy, even though the connection is slight, is sufficient to convict him with knowing participation in the conspiracy." *Id.* at 382, 478 S.E.2d at 294. "[T]he acts and declarations of any conspirator made during the conspiracy and in furtherance thereof are deemed to be the acts and declarations of every other conspirator and are admissible against all." *Id.* (quoting *State v. Sullivan*, 277 S.C. 35, 42, 282 S.E.2d 838, 842 (1981)).

At trial, Larmand moved for a directed verdict, arguing there was no evidence he conspired in any way with Lemire to harm Lochbaum, bring the gun, or brandish the gun. The State asserted it presented evidence of conspiracy, which was the same evidence it argued met the premeditation requirement for the lynching charge. The court denied Larmand's motion, finding the acts and declarations of any conspirator in conspiracy and in furtherance thereof are deemed to be acts and declarations of every other conspirator and are admissible in full.

Larmand and Lemire both testified they did not conspire to attack Lochbaum, and the State presented no evidence of an agreement between the two. The only

evidence the State presented was Larmand and Lemire arrived at the same place together. We find no evidence was presented from which the jury could infer Larmand and Lemire had a common agreement and understanding to injure Lochbaum or point a firearm at Lochbaum; therefore, the trial court erred in denying Larmand's motion for a directed verdict.

III. Pointing and Presenting a Firearm

Larmand argues the trial court erred in not directing a verdict on the charge of pointing and presenting a firearm because the State failed to prove a conspiracy between Larmand and Lemire or present any evidence sufficient to convict Larmand of pointing and presenting a firearm. We agree.

It is undisputed that Larmand never had possession of the gun. The trial court denied Larmand's motion for directed verdict because Lemire had the gun, and the acts of a conspirator in conspiracy are deemed to be acts of every other conspirator. Because we find the trial court erred in denying Larmand's motion for a directed verdict as to the conspiracy charge, we also find the trial court erred in denying his motion for a directed verdict as to the charge of pointing and presenting a firearm.

CONCLUSION

We find the trial court erred in not directing a verdict as to Larmand's charges of lynching, conspiracy, and pointing and presenting a firearm. We decline to address Larmand's remaining arguments because these issues are dispositive of the appeal. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not address remaining issues when its determination of another issue is dispositive of the appeal).

Accordingly, Larmand's convictions for second-degree lynching, conspiracy, and pointing and presenting a firearm are

REVERSED.

FEW, C.J., and HUFF, SHORT, WILLIAMS, THOMAS, PIEPER, KONDUROS, GEATHERS, and LOCKEMY, JJ., concur.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From York County
The Honorable William H. Seals, Jr., Circuit Court Judge
Appellate Case No. 2009-144086

THE STATE,

Respondent,

vs.

FRANCIS LARMAND,

Appellant.

PETITION FOR REHEARING

In an *en banc* Opinion filed March 13, 2013, the Court of Appeals reversed Appellant's convictions for second degree lynching, conspiracy and pointing and presenting a firearm, holding the circuit court erred in denying Appellant's motion for directed verdict because the State failed to present evidence of: 1) premeditation and intent as to the lynching charge; or 2) an agreement as to the conspiracy and pointing and presenting charges. Pursuant to SCACR 221, Respondent State of South Carolina petitions for rehearing, and submits the Court of Appeals: 1) applied an improper standard of appellate review by construing the evidence and its inferences in the light most favorable to the defense, rather than properly construing the evidence in the light most favorable to the State; 2) expressly, and erroneously, credited the Appellant's

evidence, which the jury implicitly rejected in its verdict, while ignoring significant parts of the State's evidence; 3) improperly made credibility determinations in accepting Appellant's evidence; 4) improperly weighed the evidence; and 5) substituted its judgment for the circuit court's findings regarding the sufficiency of the evidence, and ultimately the jury's verdict.

When ruling on a directed verdict motion, the trial court is concerned with the existence or nonexistence of evidence, not its weight. State v. Gaines, 380 S.C. 23, 667 S.E.2d 728, 732-33 (2008). In reviewing the denial of a directed verdict motion, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State, and the appellate court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Brown, 2013 WL 960676, *2 (S.C. Supreme Court, filed March 13, 2013); State v. Gilliland, 2012 WL 5935618, *3 (S.C. Court of Appeals, filed November 28, 2012). If there is any direct evidence or circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must find the case was properly submitted to the jury. Brown at *2; State v. Gentry, 363 S.C. 93, 610 S.E.2d 494, 500 (2005); Gilliland at *3.

1. Standard of Appellate Review

Even though the Court of Appeals expressly acknowledged the limited scope of appellate review, it then failed to apply it. Rather than consider the evidence and all reasonable inferences in the light most favorable to the State, the Court ignored much of the State's evidence, including the testimony of witnesses to the attack on the victim. Significantly, in finding a lack of evidence regarding premeditation, intent and

conspiracy, the Court of Appeals relied extensively, and almost exclusively, on the testimony of Appellant and his co-defendant.

On pages 2-3 of the Opinion, the Court of Appeals discusses the testimony of Appellant and the co-defendant at length, while completely ignoring the witnesses' testimony. On page 5 of the Opinion, the Court specifically relies on the defense testimony regarding events immediately preceding the attack on the victim in ultimately concluding the record was "devoid of any evidence" tending to prove Appellant and his co-defendant acted with the premeditated purpose and intent required for the lynching conviction. As to the conspiracy and pointing and presenting charges, in concluding there was no evidence of an agreement, the Court again cited and relied on the testimony of Appellant and the co-defendant denying they conspired to attack the victim.

At the end of the State's case, the defense's evidence is absolutely irrelevant for purposes of considering the efficacy of a directed verdict motion. As set forth below, and contrary to the Court of Appeals' findings, the State presented circumstantial evidence and direct evidence in its case-in-chief from which the jury could reasonably infer premeditation and intent as to the lynching charge, and the existence of an agreement as to the conspiracy and pointing and presenting a firearm charges. The Court of Appeals' reliance on the defense's evidence to find circuit court error in denying the directed verdict motion is contrary to the appropriate standard of appellate review regarding directed verdict motions.

2. The State's Evidence and Reasonable Inferences

The fallacy of the Court of Appeals analysis in this case is amply demonstrated by its extremely truncated summation of the State's evidence. According to the Court, the State merely presented evidence that Appellant and his co-defendant drove together to the victim's house at midnight; they were uninvited; they parked down the street from the victim's house; they wore dark clothing;[1] and they approached the house separately on foot with the co-defendant carrying a loaded gun pointed at the victim. (Opinion, p. 5). Contrary to the Court of Appeals' summation, at the conclusion of the State's case-in-chief, when considered **in the light most favorable to the State**, there was ample evidence, direct and circumstantial, to support the circuit court's denial of Appellant's directed verdict motion.

a. The State's Evidence

The evidence in the State's case-in-chief established the victim worked for Appellant's wife's business (Pop-A-Lock) for several years, but was fired in October 2008. By April 2009, Appellant thought the victim was working with a current Pop-A-Lock employee to scam the company by intercepting service calls.

On April 30, 2009, Appellant and the co-defendant (Appellant's brother-in-law) traveled together for over an hour from their home in North Carolina to Rock Hill, waited in the Knights Stadium parking lot as part of a plan to prove the victim was intercepting

[1] To minimize the clothing issue, the Court of Appeals referenced the defendants' explanations of why they were wearing dark clothes.

calls, and then drove to the victim's house when he did not show up at the stadium.[2] They were in a vehicle the victim would not recognize, both wore all black clothing, and the co-defendant had a loaded revolver. They arrived at the victim's house around midnight, and rather than stop in front of his house, they parked out of sight around the corner.

Appellant then approached the house alone, and asked to speak with the victim. Some of the victim's neighbors were standing in his yard, and after they walked off, Appellant initiated an argument with the victim about messing with the business, and started walking down the street away from where the neighbors were standing. The neighbors were suspicious because Appellant suddenly showed up in the middle of the night, wearing dark clothes, and he was acting nervous, so they stood down the street from the victim's house and watched.[3]

While Appellant and the victim were arguing, the co-defendant approached along the dark street, unnoticed by the victim or his neighbors, then suddenly emerged from the darkness and ran toward the victim with the loaded revolver. The co-defendant cocked

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[2] Even though the Court of Appeals relied so heavily on the defense evidence, it ignored parts of that evidence less favorable to Appellant. For example, Appellant testified he stopped to get gas after he left the stadium parking lot, and on cross-examination, stated it took approximately twenty-five minutes to drive from the gas station to the victim's house, which was even more time for Appellant and the co-defendant to discuss why they were going to the victim's house, and plan what they wanted to do when they got there. (R., p. 382). It also shows their intent to deal with the victim in person that night.

[3] It should be noted the same circumstances the Court of Appeals dismissed as insufficient to support denial of the directed verdict motion were sufficient to make the neighbors immediately suspect Appellant's intentions.

the gun and pointed it at the victim, yelling "this is what you get when you f**k with my family."

The victim defended himself by grabbing for the gun. As he and the co-defendant struggled on the ground, Appellant put the victim in a choke hold. One witness testified the victim was purple in the face, could not breathe, and appeared to be dying. When the victim's neighbors intervened and tried to get the co-defendant to release the gun, he responded, "f**k you, he's f**king with my family." During the struggle for the gun, the trigger was pulled, and the gun would have fired but for a neighbor's finger between the hammer and the firing pin.

After the neighbors pulled Appellant off the victim, and the victim got the gun from the co-defendant, Appellant and the co-defendant ran down the street, got in Appellant's vehicle and fled the scene. The victim's neighbors followed them as they ran down the street, yelling the police were on the way. When police arrived at the victim's home, a be-on-the-lookout bulletin was issued for Appellant's vehicle, and a Rock Hill police officer stopped it a short time later.

b. Inferences from the Evidence

The **only** reasonable inference from the State's evidence regarding the events of April 30, 2009, was that Appellant and his co-defendant **jointly** traveled for over an hour to York County that night to take care of someone they believed was "f**king with [their] family." When their **initial** plan to deal with the victim at Knights Stadium failed, they were so determined to take care of the perceived problem, they drove over to the

victim's house in the middle of the night, parked around the corner from the house, and Appellant approached the victim while the co-defendant lay in wait in the darkness.[4]

Appellant then initiated an argument with the victim, and while he had the victim distracted, the co-defendant came out of the darkness, pointing a loaded, cocked gun at the victim. The co-defendant's words as he ran toward the victim spoke volumes about why he and Appellant were there that night: "[t]his is what you get when you f**k with my family," a sentiment he repeated multiple times while the victim and his neighbors attempted to get the gun away from him. When it became clear their plan to deal with the victim had completely failed, Appellant and the co-defendant fled the scene, which can also be used to infer guilt.

3. Effect of Court of Appeals Analysis

The gist of the Court of Appeals conclusion in this case is that the State's case failed because there was no testimonial evidence of an express agreement between Appellant and his co-defendant. Under the Court's analysis, unless the State can produce evidence of actual discussions between co-conspirators while planning the crime, a defendant's testimony (after the State rests its case-in-chief) that he never conspired with his co-defendants, and never intended to inflict any harm, will mandate a directed verdict on any charge requiring an agreement, premeditation and intent to commit a crime. Such

[4] When asked on cross-examination why he did not simply call the victim to tell him to leave the business alone, Appellant stated he "didn't know his cell phone number off the top of [his] head." He then conceded his wife, who he called from the gas station to get directions to the victim's house, did know the number. (R., pp. 353-54, 388). That fact further supports the implication Appellant and the co-defendant intended to do far more than simply "talk" to the victim that night.

a result turns the well-established directed verdict analysis, and the applicable standard of appellate review, upside down.

4. Remaining Issues

Due to its decision on the directed verdict issue, the Court of Appeals did not render decisions on the remaining issues raised by Appellant, specifically the circuit court's decision to send a written copy of the entire jury charge to the jury, and the efficacy of the jury charge on inference of guilt as a principal. Petitioner stands on its brief as to those issues, and asks that the Court of Appeals address the issues.

Based on the foregoing, Respondent requests that the Court of Appeals rehear this matter, vacate the Opinion filed March 13, 2013, and issue an opinion addressing all issues and affirming Appellant's convictions for second degree lynching, conspiracy and pointing and presenting a firearm.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER

March 28, 2014

Columbia, SC

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From York County
The Honorable William H. Seals, Jr., Circuit Court Judge
Appellate Case No. 2009-144086

THE STATE,

Respondent,

vs.

FRANCIS LARMAND,

Appellant.

CERTIFICATE OF SERVICE

I, Sally B. Ellison, hereby certify I served the Petition for Rehearing on Appellant by placing a copy in the United States Mail Service, postage pre-paid, addressed as follows:

C. Rauch Wise, Esquire
305 Main Street
Greenwood, SC 29646

I further certify that all parties required by Rule to be served have been served.

This 28th day of March 2013.

Sally B. Ellison
Legal Assistant

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The South Carolina Court of Appeals

The State, Respondent,

v.

Francis Larmand, Appellant.

Appellate Case No. 2009-144086

ORDER

After careful consideration of the suggestion for rehearing en banc, the Court has determined that en banc consideration is not necessary to secure or maintain the uniformity of its decisions, nor is the proceeding one involving a question of exceptional importance. Further, the Court finds no other ground appearing to warrant a rehearing en banc. Accordingly, the suggestion for rehearing en banc is denied.

John Cannon Jr. C.J.

Thomas E. Huff J.

Paul G. Short, Jr. J.

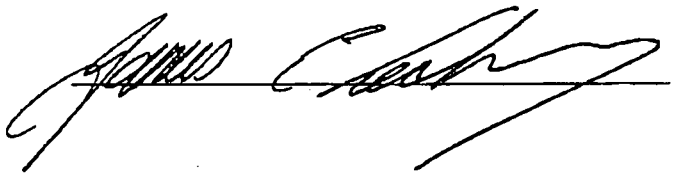
H. Bruce Williams J.

Paula H. Thomas J.

Daniel F. Pieper J.

A. Lee J.

John D. Geathers J.



J.

Columbia, South Carolina

cc:
Deborah R.J. Shupe
John Dunlap Rhea
C. Rauch Wise

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From York County
The Honorable William H. Seals, Jr., Circuit Court Judge
On Petition for Writ of Certiorari to the Court of Appeals
Appellate Case No. 2009-144086

THE STATE,

Petitioner,

vs.

FRANCIS LARMAND,

Respondent.

PROOF OF SERVICE

I, Sally Ellison, certify that I have served the within Appendix on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record.

C. Rauch Wise, Esquire
Attorney at Law
305 Main Street
Greenwood, SC 29646

I further certify that all parties required by Rule to be served have been served.

This 29th day of May 2013.

Sally B. Ellison

SALLY B. ELLISON
Legal Assistant

Office of the Attorney General
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