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**Aug 18 2023**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Colleton County

Honorable Carmen T. Mullen, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

RICKY D. EDWARDS, JR.

APPELLANT

APPELLATE CASE NO. 2022-000892

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ANDERS BRIEF OF APPELLANT

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ROBERT M. DUDEK  
Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

Whether the court erred by refusing to direct a verdict where the evidence only raised suspicion that appellant committed the crime of criminal sexual conduct with a minor in the third degree, since a directed verdict should have been issued under these circumstances?

## STATEMENT OF THE CASE

Appellant was indicted at the December 9, 2021, term of the Colleton County grand jury for the offense of criminal sexual conduct with a minor in the third degree. R.264. His case was called to trial on June 13, 2022, before the Honorable Carmen Mullen, and a jury. R. 1. Grant Smaldone represented appellant. The assistant solicitor was Julie Kate Keeney. R 2.

On June 15, 2022, the jury found appellant guilty. R 252, ll. 1-7. Judge Mullen sentenced appellant to ten years' imprisonment. R 262, ll. 9-14.

This appeal follows.

## STANDARD OF REVIEW

“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. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011) (quoting State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)). “Evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt.” Id. “Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error.” Id. at 139, 708 S.E.2d at 776-777. “On appeal of the denial of a directed verdict of acquittal, this Court must look at the evidence in the light most favorable to the state.” Id. at 139, 708 S.E.2d at 777; see also State v. Hepburn, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013). If the state failed to present any direct evidence or any substantial circumstantial evidence reasonably tending to prove guilt of the accused, the appellate court must reverse the lower court’s denial of the directed verdict motion. Hepburn, 406 S.C. at 429, 753 S.E.2d at 409.

## ARGUMENT

The court erred by refusing to direct a verdict where the evidence only raised suspicion that appellant committed the crime of criminal sexual conduct with a minor in the third degree, since a directed verdict should have been issued under these circumstances.

### **Relevant Facts**

Stephanie Owens was thirty-one-years-old at the time of trial. She lived with her boyfriend and her two sons who were eight and fourteen-years-old. R. 97, ll. 4-17. Kristian D. was Stephanie's niece. Kristian D., the alleged victim, was the daughter of Stephanie's sister Tabitha. Kristian D. was appellant's stepdaughter since appellant was married to Tabatha. R. 98, ll. 1-19.

Stephanie testified that on July 10, 2017, Kristian claimed to her that on the night Hurricane Matthew came through -- about nine months earlier -- on October 7, 2016, that appellant had improperly touched her. R. 100, l. 20-102, l. 6. Stephanie said she called her sister, Cassandra Williams, and together they called the police about Kristian's allegation. DSS also became involved because of the call. In addition, "Kristian immediately lived with me. Her mother signed her rights over to me, but not to anybody else." R. 102, l. 4-103, l. 5.

Kristian was fifteen at the time she made this allegation. Kristian D. was twenty years old at the time of trial. R. 110, ll. 3-20. Kristian testified that appellant had been her stepfather since she was two-years-old. "He was a father figure to me." R. 111, ll. 17-22.

She lived with her mother, appellant, her half-sister Bayleigh, and her grandparents, Ricky Edwards, Sr., and Rhonda Edwards in a small "doublewide trailer," with thin walls. R. 112, ll. 113, l. 6; R. 179, ll. 10-24. Kristian said that on the night of October 7, 2017, "the night of Hurricane Matthew," that it was her Bayleigh's birthday. She said that her parents gave

Bayleigh vodka and lemon, a “Lemon Drop,” and appellant also gave her the same drink. According to Kristian, appellant also gave her a Bud Light and he told Tabatha: “[I]t’s fine, it’s fine, like it’s just one beer.” Kristian recalled that they were playing a board game as the hurricane was passing through that night. R. 112, l. 15-114, l. 23.

She then went into her bedroom to go to sleep. She claimed appellant came into her room “and stared at me. And I didn’t say anything, because it was kind of weird, I didn’t know what he was doing. And my mom was sitting on the couch, and she was still awake. I’m not sure if my sister was awake, I don’t—I don’t know. But she was like, ‘what are you doing in there? Like, you need to get out of that room.’” Kristian said appellant had been drinking that night and she assumed he was intoxicated. R. 115, ll. 15-22. The following occurred on direct examination of the alleged victim:

Q. Okay. And what happened next, when he’s by your bedside, saying he wanted to have sex with you?

A. I’m thinking he thought I was drunk, and I was completely sober, and he said that he wanted to have sex with me, and that it’ll feel really good, and it would be my first time. And he got on top of me, and started to kiss me, and I blocked it like that.

Q. You blocked it?

A. I blocked it, like I did that, but I didn’t know what else to do.

Q. What, you blocked his tongue from coming in your mouth?

A. Yeah.

Q. Okay. What happened next?

A. And he slowly put his hands down to my breasts, and he tried to move a little further, and I turned to my side, so he couldn’t do anything to me.

R. 115, l. 23 - 116, l. 16.

Kristian said after appellant touched her in this manner, she was in shock and crying. She said she texted her mother telling her she needed to tell her something. R. 117, ll. 16-22.

Kristian said about an hour later, her mother came into her room and asked her what was wrong. “And I told her what happened, and she looked like she was so done, and she stormed out and got into a big fight with my stepdad.” R. 120, ll. 12-19. Her mother, Tabitha Edwards, would later testify as a defense witness that this never happened.

Kristian said that appellant told her that she was a liar after her mother told him about her accusation. He said, “I would never do that to you.” She testified the next morning, they “pretended like nothing happened...everything was fine, and I had no idea what to do.” R. 121, ll. 6-21.

Kristian also said that after she went back to school after the “Hurricane Break” that she told her friend Shelby Pruitt<sup>1</sup> what had happened, and she told her aunt, Stephanie Owens. “I ended up moving in with my aunt [Stephanie].” R. 122, l. 5-123, l. 16.

On cross-examination, Kristian admitted that she sent a text message to her mother, appellant’s wife, in which she said, “I’m sorry.” “Sorry for what I did. I just don’t want to be around that family. Grandpa didn’t put anything in my mind. It was me, grandpa didn’t know until last minute.” R. 127, ll. 1-25.

Kristian said she meant, “I was sorry because my mom was paying for all of my clothes, paying for my lunch and everything, and I felt sorry for her, so I said, ‘I’m sorry.’” Kristian admitted she wanted to move out of appellant’s household. She said there was drug usage in the

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<sup>1</sup> Pruitt was twenty years-old at the time of appellant’s trial. She testified that Kristian made a disclosure of “sexual abuse” to her. The abuse allegedly took place in Kristian’s bedroom on the “night of Hurricane Matthew.” R. 142, l. 1 – 144, l. 1.

home and “abuse” and she concluded “it was not mentally or physically healthy for me to be there.” R. 130, l. 8-133, l. 3.

On redirect examination, Kristian asserted that she did not make this accusation against appellant so she would be able to move somewhere else. R. 140, ll. 5-16.

Tabitha Edwards, appellant’s wife and the mother of Kristian, remembered the evening in question. She said she had one drink that evening. She denied Kristian ever told her anything about appellant touching her improperly. R. 175, l. 15-177, l. 9.

Tabitha said she vividly remembered the first time she heard this allegation. It was on July 10, 2016, at about six p.m. when “Kristian’s biological dad’s father called and threatened to kill my husband over the phone.” R. 176, l. 20-177, l. 14.

Tabitha recalled, “I immediately called my sister, Stephanie Owens, and called Kristian repeatedly, got no answer, then finally got word. I took off to go to them, and I was detained by, I believe, Dorchester County Sherriff’s Office.” R. 177, l. 10-178, l. 1.

Tabitha remembered on the night of the hurricane that they were playing board games. “I know that the girls were given alcohol, [but] they were not given very much at all. And then me and Ricky spent some time outside up underneath the carport. We smoked cigarettes, which I started back, but other than that— [nothing happened].” R. 178, ll. 5-16.

Tabitha repeated that she was not aware of Kristian’s allegations about her husband until much later. “They called the police and did everything behind my back, basically. Didn’t even call and have the nerve to ask me anything. It was ten months later. I mean, I don’t know anybody [who] really remembers ten months prior.” R. 180, ll. 13-22.

Tabitha admitted that she and appellant had used drugs in the past, she was not proud of that fact, but she was telling the truth that Kristian never made a report of molestation by appellant to her. R. 182, l. 5-183, l. 13.

Kristian's grandmother, Rhonda Edwards, also remembered the night of the hurricane. Ms. Edwards also testified she was not aware of Kristian's allegation that appellant improperly touched her. She was a teacher at a local school and that if Kristian had told her about what supposedly happened, she would have reported it to the police as a "mandatory reporter" whether she believed it or not. R. 195, l. 19-198, l. 11.

### **Directed verdict motions**

Defense counsel Smaldone made a motion for a directed verdict at the conclusion of the state's case. The judge denied the motion for a directed verdict. Counsel renewed the directed verdict motion at the close of the case, and it was again denied. R. 169, l. 23- 170, l. 14; R. 200, l. 23 – 201, l. 9.

### **Allen charge**

The jury reported to the trial judge during its deliberations that it could not reach a verdict. The judge then gave an Allen<sup>2</sup> charge. R. 247, l. 21 – 252, l. 7

Following that instruction, the foreperson of the jury asked if the jury could go home for the evening and reconvene for continued deliberations the next morning as the judge mentioned at the conclusion of her Allen charge. The judge answered that all of the jurors would have to agree to stop deliberations and return the next day for that to be an option. However, the jury reached a verdict, apparently not agreeing to go home for the evening. R. 247, l. 21 – 252, l. 7.

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<sup>2</sup> Allen v. United States, 164 U.S. 492 (1896).

## Discussion

The trial court should not refuse to grant a motion for directed verdict where the evidence, as here, merely raises a suspicion that the accused is guilty. See State v. Mitchell, 341 S.C. 406, 407, 535 S.E.2d 126, 127 (2000); State v. Schrock, 288 S.C. 129, 322 S.E.2d 450 (1994). Appellant understands that the trial court is not concerned with the weight of the evidence at the directed verdict stage, and that all reasonable inferences must be made in the light most favorable to the state at the directed phase. See State v. Brannon, 388 S.C. 498, 697 S.E.2d 593 (2010); State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011).

Here, however, appellant was indicted for criminal sexual conduct in the third degree. Pursuant to S.C. Code Ann. § 16-3-654 (1)(a), appellant must have used force or coercion to accomplish the sexual battery. In this case, there was no evidence appellant threatened to use force or used violence or coercion to carry out a sexual battery. See S.C. Code §16-3-651(b)(c). At most, the evidence only raised suspicion that coercion was involved, which was insufficient to withstand a directed verdict motion.<sup>3</sup> See State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000).

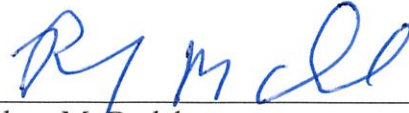
Likewise, the evidence here only raised suspicion, albeit strong suspicion, that appellant “willfully or lewdly committed or attempted a lewd or lascivious act on, or with the body or body parts of, a child under the age of sixteen years...with the intent to arouse, appeal to, or gratify the lust, passion or sexual desires of the [appellant] or child.” R. 241, ll. 1-15. The judge erred by refusing to direct the verdict of acquittal given that the evidence only raised a suspicion of appellant’s guilt in this case.

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<sup>3</sup> Appellant recognizes that each directed motion case on appeal is very fact intensive and therefore the holding of each appellate opinion is limited to its peculiar facts. State v. Pearson, 415 S.C. 463, 474, n. 5 783 S.E.2d 802, 808, n. 5 (2016).

**CONCLUSION**

By reason of the foregoing argument, a direct verdict of acquittal should be issued.



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Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of August, 2023.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Ricky Devon Edwards states:

1. He is Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Carmen T. Mullen, which was held on June 13 - 15, 2022, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

Wherefore, he asks the Court to relieve him as counsel for Ricky Devon Edwards.

Respectfully Submitted,



Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR APPELLANT

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**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s):
- (2) Trial Transcript pp. 1-2, 88-170, 174-201, 206-252, 262.

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



Robert M. Dudek  
Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

This 18th day of August, 2023.

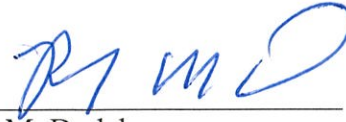
**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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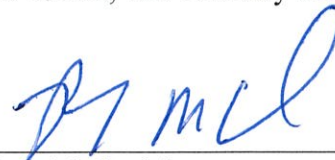
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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Ricky Devon Edwards, #388241, at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 17th day of August, 2023.



Robert M. Dudek  
Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

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