

**RECEIVED**

**Feb 09 2024**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Colleton County

Honorable Benjamin H. Culbertson, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

ROBERT ANTHONY CARTER,

APPELLANT

APPELLATE CASE NO. 2023-000797

---

ANDERS BRIEF OF APPELLANT

---

SARAH E. SHIPE  
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

**TABLE OF CONTENTS**

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ..... ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW .....3

ARGUMENT

The trial court erred denying appellant’s motion for directed  
verdict where the state failed to present evidence that appellant  
intended to commit a crime as required by first degree burglary .....4

CONCLUSION.....7

PETITION TO BE RELIEVED AS COUNSEL .....8

**TABLE OF AUTHORITIES**

**Cases**

*State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2011)..... 3, 6

*State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004) ..... 6

*State v. Gaster*, 349 S.C. 545, 564 S.E.2d 87 (2002)..... 6

*State v. Harris*, 351 S.C. 643, 572 S.E.2d 267 (2002)..... 6

*State v. Hepburn*, 406 S.C. 416, 753 S.E.2d 402 (2013) ..... 3

*State v. Lollis*, 343 S.C. 580, 541 S.E.2d 254 (2001) ..... 6

*State v. Martin*, 340 S.C. 597, 533 S.E.2d 572 (2000) ..... 6

*State v. Mitchell*, 341 S.C. 406, 535 S.E.2d 126 (2000) ..... 3, 6

*State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2012) ..... 6

*State v. Venters*, 300 S.C. 260, 387 S.E.2d 270 (1990) ..... 6

*State v. Weston*, 367 S.C. 279, 625 S.E.2d 641 (2006)..... 5

**Statutes**

S.C. Code Ann. § 16-11-311..... 5

**STATEMENT OF ISSUE ON APPEAL**

Whether the trial court erred denying appellant's motion for directed verdict where the state failed to present evidence that appellant intended to commit a crime as required by first degree burglary?

## STATEMENT OF THE CASE

On November 5, 2020, a Colleton County grand jury indicted appellant for burglary, first degree and assault and battery, first degree. R. 296. Appellant's case was called to trial on May 8, 2023, before the Honorable Benjamin H. Culbertson and a jury. R. 1. Appellant was represented by Carles Anderson and David Matthews. R. 1. Assistant solicitors, Julie Keeney and Jillian Contestabile, represented the state. R. 1.

On May 9, 2023, the jury found appellant guilty of burglary, first degree and assault and battery, third degree. R. 287, ll. 4-14. Judge Culbertson sentenced appellant to concurrent terms of fifteen years' imprisonment for burglary, first degree and thirty days' imprisonment for assault and battery, third degree. R. 294, ll. 2-10.

This appeal follows.

### **STANDARD OF REVIEW**

“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.” *State v. Bostick*, 392 S.C. 134, 139, 708 S.E.2d 774, 777 (2011) (quoting *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)); *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 416, 429 S.E.2d at 409.

## ARGUMENT

The trial court erred denying appellant's motion for directed verdict where the state failed to present evidence that appellant intended to commit a crime as required by first degree burglary.

### **Relevant facts**

Appellant and complainant, Shannon Deay, were in a romantic, albeit tumultuous relationship for three years. R. 112, ll. 3-5. During that time appellant and Deay lived together in a rental home. R. 112, ll. 6-16. In the months leading up to the incident appellant was no longer officially living in the home, as the landlord had him removed. R. 113, ll. 15-23; R. 175, ll. 11-20. However, evidence at trial suggested Deay and appellant had maintained a relationship and she allowed him in the home. R. 113, ll. 10-14; 114, ll. 1-9; 128, ll. 8-14.

At trial the state presented put forth evidence, though appellant disputed it, that appellant did not have consent to enter Deay's home. Deay testified appellant was evicted from the home they shared and put on trespass notice. R. 113, ll. 15-23. She also claimed he did not have permission to be in the home on the evening of the incident. R. 129, ll. 16-18. A county official testified that a writ of ejectment was filed with their office and appellant had been evicted effective September 23, 2019. R. 175, ll. 11-20.

Deay testified the incident occurred at night. R. 128, l. 15-129, l. 18. Law enforcement witness, William Ballard, corroborated Deay's testimony regarding the time of day that the incident occurred. R. 95, ll. 18-21. Deay claimed on the night of the incident appellant "appeared" in her room and there was a scuffle between appellant and her guest Colin Amburg. R. 130, ll. 5-12; 133, ll. 18-23. She testified that appellant picked something up and threw it against the wall. R. 130, ll. 10-12.

At the conclusion of the state's case defense counsel moved for a directed verdict arguing the state had not presented any evidence of intent as required by burglary, first degree. Counsel argued that intent to commit a crime cannot be speculative in nature and that based on the evidence appellant could not have known Colin Amburg was in the home. R. 205, l. 24-206, l. 20. The state argued appellant knew Colin was in the home with Deay based on a recording of a jail call and that appellant had seen the two together earlier the day of the incident. R. 206, l. 24-207, l. 7.

The court denied the motion finding "there [was] enough evidence [] viewing the evidence in the light most favorable to the State." R. 207, ll. 17-24.

### **Discussion**

At trial there was evidence, though appellant disputed it, that appellant did not have consent to enter Deay's home. Deay testified she did not want appellant in the home that evening and there was evidence that appellant had been evicted the previous month. There was evidence the incident happened at night. However, there was no evidence that appellant had any intent to commit a crime.

A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and the entering or remaining occurs in the nighttime. S.C. Code Ann. § 16-11-311.

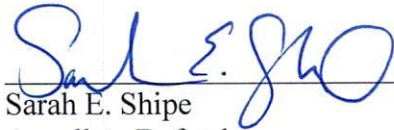
"A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged." *State v. Weston*, 367 S.C. 279, 292-93, 625 S.E.2d 641, 648 (2006). When reviewing a denial of a directed verdict, the Court views the evidence and all reasonable inferences in the light most favorable to the state. *Id.* If there was any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the

Court must find the case was properly submitted to the jury. *State v. Cherry*, 361 S.C. 588, 593–593, 606 S.E.2d 475, 477–478 (2004). *See also State v. Harris*, 351 S.C. 643, 653, 572 S.E.2d 267, 273 (2002); *State v. Gaster*, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002); *State v. Venters*, 300 S.C. 260, 264, 387 S.E.2d 270, 272–73 (1990).

The trial court reversibly erred by denying appellant’s motion for directed verdict as to burglary, first degree. There was no evidence or testimony regarding appellant’s intent before he entered the home. Deay’s testimony was not that appellant came in with any intention to assault her guest, Colin. Rather her testimony was that the two men scuffled. Thus, the evidence at trial did *not* reasonably tend to prove the guilt of appellant. *See State v. Mitchell*, 341 S.C. 406, 535 S.E.2d 126 (2000) (“The trial judge is required to submit the case to the jury 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”) (internal citations omitted); *State v. Martin*, 340 S.C. 597, 533 S.E.2d 572 (2000); *State v. Lollis*, 343 S.C. 580, 541 S.E.2d 254 (2001); *State v. Bostick*, 392 S.C. 134, 141, 708 S.E.2d 774, 778 (2011); *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2012).

CONCLUSION

By reason of the foregoing, appellant requests this Court reverse the trial court and grant his motion for a directed verdict.

  
\_\_\_\_\_  
Sarah E. Shipe  
Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of February, 2024.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

RECEIVED

Feb 09 2024

SC Court of Appeals

Appeal from Colleton County

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROBERT ANTHONY CARTER,

APPELLANT

APPELLATE CASE NO. 2023-000797

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Robert Anthony Carter states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Benjamin H. Culbertson, which was held on May 8-9, 2023, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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, she asks the Court to relieve her as counsel for Robert Anthony Carter.

Respectfully Submitted,

  
\_\_\_\_\_  
Sarah E. Shipe  
Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of February, 2024.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

**Feb 09 2024**

**SC Court of Appeals**

Appeal from Colleton County

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROBERT ANTHONY CARTER,

APPELLANT


APPELLATE CASE NO. 2023-000797

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

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

- (1) Trial Transcript dated May 8, 2023, pages 1-136;
- (2) Trial Transcript dated May 9, 2023, pages 1-159;
- (3) Indictments and sentence sheets.

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

  
\_\_\_\_\_  
Sarah E. Shipe  
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 9th day of February, 2024.

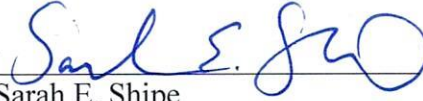
RECEIVED

Feb 09 2024

SC Court of Appeals

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."



Sarah E. Shipe  
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 9th day of February, 2024.

**RECEIVED**

**Feb 09 2024**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Colleton County

Honorable Benjamin H. Culbertson, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

ROBERT ANTHONY CARTER,

APPELLANT

APPELLATE CASE NO. 2023-000797

---

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 Robert Anthony Carter, #359350, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 9th day of February, 2024.



Sarah E. Shipe  
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