STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

G. Thomas Cooper, Circuit Court Judge

LEROY BROWN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000498

SUPPLEMENTAL APPENDIX

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STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from Richland County
The Honorable Clifton Newman, Circuit Court Judge

Opinion No. 2011-UP-041 (S.C. Ct. App. filed Feb. 1, 2011)
Indictment No. 2008-GS-40-11826

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

LEROY ADAMS BROWN,

PETITIONER.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The Court of Appeals properly affirmed the denial of a directed verdict where the State presented substantial circumstantial evidence of guilt.

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STATEMENT OF THE CASE

Petitioner was indicted in February of 2008 in Richland County for burglary in the first degree and larceny. (R. p. 246-47). He was tried on December 10-11, 2008, before the Honorable Clifton Newman and a jury. Petitioner was found guilty of first-degree burglary, but not guilty of larceny. (R. p. 223, lines 14-21). Judge Newman sentenced him to eighteen years. (R. p. 244, lines 14-20). A notice of appeal was timely served and filed. On February 1, 2011, the South Carolina Court of Appeals affirmed Petitioner's conviction and sentence. (App. p. 1-2). See State v. Brown, Unpublished Opinion No. 2011-UP-041 (S.C. Ct. App. filed Feb. 1, 2011). A petition for rehearing was submitted on February 16, 2011. (App. p. 3-8). Rehearing was denied on March 24, 2011. (App. p. 10). A Petition for Writ of Certiorari followed.

ARGUMENT

Relevant Facts

The burglary of the victim's house occurred in the middle of an exterior painting project. (R. p. 11; p. 19-21; p. 52-55). Neither the general contractor or the subcontractor ever hired Petitioner to work at the victim's house, and the crew workers never saw or talked to Petitioner at the victim's house. (R. p. 11-13; p. 58-59; p. 102-103). The subcontractor testified that he was present every day at the victim's house throughout this job, because he was also painting. (R. p. 65, lines 1-4). He testified that any time someone came around looking for painting work, his crew let him know. (R. p. 58-59; p. 68-69). No one came looking for work while he was on the job at the victim's house. (R. p. 58-59). The victim testified that she had never seen Petitioner before in her life and had never given him permission to enter her home. (See R. p. 32-34; p. 42). She had lived in the house since 1990. (R. p. 18, lines 13-20).

On the Friday before the burglary, the painters concluded their work for the weekend, closed the windows, and stored the ladders on site but away from the house. (R. p. 13, lines 15-21; p. 55-56; p. 64-69). On Sunday night, the victim put her purse on a hook in the kitchen. (R. p. 29-31). The windows were closed and there were no ladders up against the house. (R. p. 22-23). The next morning, when the painters arrived, they discovered one of their eight-foot ladders propped up against one of the first floor windows, which was wide open. (R. p. 22-28; p. 57-58). The very bottom of the window was over six feet off of the ground, up to eight feet off of the ground. (R. p. 85, lines 10-16; p. 88-92). The victim's purse, minus her wallet containing some cash, was on the front lawn. (R. p. 52; p. 78, line 24 – p. 79, line 4).

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The police were called to investigate, and Petitioner's fingerprints were ultimately found on and around that particular window. (See R. p. 73-79; p. 189, lines 20-24). One of Petitioner's prints was found on the inside of the window, in a position suggesting that he was lifting up the window. (R. p. 78, lines 7 - p. 79, line 21; p. 112-14). The fingerprint expert testified that due to the condition of the window, the print would not have lasted very long after it was left there. (R. p. 114-15). Photographs illustrating the height of the window and the location of Petitioner's fingerprint were introduced at trial. (R. p. 72-78). No prints of value were found on the ladder, which had a ridged surface, and the purse was not fingerprinted because of its rough texture. (R. p. 75-76; p. 85-87). The victim's stolen property was never recovered. (R. p. 30; p. 105-106).

The Court of Appeals properly affirmed the denial of a directed verdict where the State presented substantial circumstantial evidence of guilt.

In ruling on a motion for directed verdict, the trial judge must view the evidence, and all of its reasonable inferences, in the light most favorable to the State. See State v. Frazier, 375 S.C. 575, 581, 654 S.E.2d 280, 283 (2007). The trial court has a duty to deny a directed verdict motion if there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused. See State v. Copeland, 321 S.C. 318, 326, 468 S.E.2d 620, 626 (2001). The trial judge is concerned only with the existence of evidence and not its weight; therefore, he is not required find that the evidence infers guilt to the exclusion of any other reasonable hypotheses. State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004).

Based upon the evidence described above, taken in the light most favorable to the State, the trial court properly denied Petitioner's directed verdict motion. (See R. p. 137-148). The cases cited by Petitioner are distinguishable because in those cases, the State

was unable to link the defendant to the crime scene at the time of the crime. See State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000) (in burglary case, directed verdict was required where, although the defendant's fingerprint was located on a screen propped up against the victim's house, the was no evidence that the screen had been on the window at the presumed point of entry, and the defendant had lawfully been on the premises at least three times previously); State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004) (murder defendant entitled to directed verdict where, although his fingerprint was found on a coffee cup lid inside the victim's borrowed car, there was no evidence that the victim was killed in the car and no evidence linking the defendant to the crime scene where the body was found); State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984) (in double murder case, directed verdict was warranted where no one could place the defendant at the crime scene; where the palm print found was not his; where the footprint at the scene was only "similar" to some found in an area where he admitted being; and where there was no evidence tying him to the cigarette butts found on the scene except that he smoked the same popular brand).

In this case, Petitioner's fingerprint on the inside of the house, combined with the other circumstantial evidence, placed him at the scene of the crime at the time of the crime. The fingerprint's location on the inside of the window - a stationary fixture in the house - established his presence in the house. (R. p. 75-78). The print was located at the burglar's clear point of entry. (R. p. 22-23; p. 56-58). The fingerprint was necessarily fresh because it would not have lasted a long time in that location. (R. p. 115, lines 12-15). More importantly, evidence was presented that the print could not have been placed in that particular location on the inside of the window by a person standing outside the

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window. (R. p. 73-78; p. 85; p. 88-92). Therefore, in this case, unlike in the Mitchell case, Petitioner had no prior lawful opportunities to place his fingerprint inside the victim's house. (R. p. 18; p. 32; p. 42; p. 58-59).

Accordingly, notwithstanding Petitioner's own testimony providing an alternate theory regarding the fingerprint's origin, there was substantial circumstantial evidence presented during the State's case supporting that Petitioner committed the burglary. The jury was the proper authority to determine, from the testimony, the photographs of the window, and the location of Petitioner's fingerprint, whether the State proved beyond a reasonable doubt that Petitioner committed this crime. Therefore, the trial court properly denied Petitioner's directed verdict motion.

In any event, Petitioner admitted his guilt in open court during the sentencing proceeding. When the judge asked Petitioner how old he was when he "committed this burglary," Petitioner responded, "Fifty-one." (R. p. 238, line 24 – p. 239, line 1). Therefore, any trial error would have been harmless beyond a reasonable doubt. See State v. Sroka, 267 S.C. 664, 665, 230 S.E.2d 816, 817 (1976) (alleged trial error is not prejudicial, and further review of the record is unnecessary, where appellant admits guilt in open court during the pre-sentence inquiry); see also State v. Wiley, 387 S.C. 490, 496, 692 S.E.2d 560, 564 (Ct. App. 2010).

CONCLUSION

For the reasons discussed above, Respondent submits that this Court should deny the Petition for Writ of Certiorari. However, if this Court grants certiorari, Respondent asks permission under the rules to fully brief the issues.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

June 21, 2011

STATE OF SOUTH CAROLINA
In the Supreme Court

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v.

LEROY ADAMS BROWN,

PETITIONER.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that the **Return to Petition for Writ of Certiorari** in the above-referenced case has been served upon **WANDA H. CARTER,** Division of Appellate Defense, South Carolina Commission on Indigent Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589, this **21st day of June, 2011.**

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