10-10-13

Dear Mr Shealouse

I am write you for your help in get A. Case Number for this Post Trial Motion I have been Writein Solicitor office and cant get knowone to tell me what goin, I CaNT Not work on My Case. Without this docket Number, here is a(copy) of the papers i have filing with the Court, and it have been a year and Noone have give me the help i Need

Thank You
10-10-13 Rockell Wright Jr

Rocksell Wright Jr
256078-CB47
Lieber-Corr-Inst
P.O.Box 205
Ridgeville, SC 29472

Greenville County

Office of the Clerk of Court

Greenville, South Carolina

Paul B. Wickensimer
Clerk of Court

Circuit Court Division
Greenville County Courthouse
305 East North Street
Greenville, South Carolina 29601
(864) 467-8551 FAX (864) 467-8540

November 7, 2012

Rocksell Wright, Jr. #256078
Lieber Correctional Inst.
CB-47
P.O. Box 205
Ridgeville, SC 29472

Dear Mr. Wright:

Thank you for returning your completed information sheet. Your filing has been filed with the General Sessions case you listed on that sheet. As a courtesy to you, a copy of your filing has been forwarded to the Solicitor's Office. Please note that the Clerk of Court is a filing office and we do not set the docket, therefore we can not provide motion status updates or information.

Sincerely
Clerk of Court
Greenville County General Sessions

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
THE STATE
V
ROCKSEN WRIGHT JR
DEFENDANT

IN THE COURT OF GENERAL SESSIONS
JUDICIAL CIRCUIT
CASE NO _____
DEFENDANTS POST TRIAL

2017 NOV -7 PM 3:20

TO THE HONORABLE Edward Welmaker
CHIEF ADMINISTRATIVE JUDGE
THE THIRTEENTH JUDICIAL CIRCUIT

Come now the defendant, by and through his undersigned counsel who would request of the Court its proper order granting the defendant a new trial in the above captioned matter on the following grounds:

1.

The defendants directed verdict motion, at the post trial stage, should be evaluated pursuant to the Due Process standard of review of "evidence beyond a reasonable doubt" as opposed to "any evidence". The evidence in this case fails to prove guilt as to the burglary beyond a reasonable doubt.

Our State Supreme Court violates the holding of Jackson v. Virginia, 443 U.S. 307 (1979) when it reviews the evidence in a criminal case in response to a Defendants directed verdict motion. This is so because the court applies an "any evidence" standard of review as opposed to "evidence beyond a reasonable doubt" Defendant submits that no rational trier of fact could have found the elements of burglary beyond a reasonable doubt in this case Jackson v. Virginia and South Carolina Decisional law.

South Carolina Appellate courts have refused to apply the Jackson v. Virginia standard of review. As discussed below, Defendant submits this is because the State courts have confused its state procedural rule for use in a directed verdict setting, with the constitutionally mandated standard of review to be used when reviewing the sufficiency of the evidence to sustain a conviction.

Early on the State Supreme Court once cited to the Jackson v. Virginia opinion, but still referred to a "reasonable" rather than a "rational" trier of fact, See State v. Hudson, 277 S.C. 200, 284 S.E. 2d 773 (1981). A year later, one state Supreme Court Justice acknowledge the opinion in a dissent which the majority refused to follow. See State v. Stewart, 278 S.C. 296, 295 S.C. 2d 627 (1982), Ness, J. dissenting. Justice Ness stated, [r]eviewing this evidence ... as required by the "any evidence" rule ... I am convinced that the record is without any evidence .... [m]oreover, viewing the evidence in accordance with the standard ... mandated by [Jackson v. Virginia], it is evening more convincing .... 278 S.C. at 306, 295 S.E. 2d at 632.

The issue did not surface again until approximately eight years later. In State v. Simpson, 275 S.C. 426, 272 S.E. 2d 431 (1990), in a dissenting opinion the state's Chief Justice expressed indecisiveness over which standard of evidentiary review to apply when asked to review the sufficiency of evidence. Said the Chief Justice, "[I find insufficient evidence] whether our traditional 'any evidence' standard of review is used". 272 S.E. 2d at 432 Gregory, J. dissenting. We respectfully point out that the federal standard was not recent at that time, but had been the law of the land for eleven years.

This indecisiveness, however, followed on the heels of an express choice by the State Supreme Court not to follow the Jackson v. Virginia standard. In State v. Stokes 299 S.C. 483, 386 S.E. 2d 241 (1989) the Court stated, "... we find that the [State] standard is consistent with federal law and reiterate that it is the proper standard to be used by a trial judge when ruling on a directed verdict motion when the State is relying exclusively on circumstantial evidence". 299 S.C. 483, 386 S.E. 2d 241.

The sole question presented in Stokes was, "what is the appropriate standard for use in ruling on a directed verdict motion, when the prosecution relies exclusively on circumstantial evidence". In affirming Stoke's conviction, the Court held that the appropriate standard was, "any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and legally deduced." 299 S.C. at 484, 386 S.E. 2d at 241.[2] Two years later, when presented with the same question, the State Court of Appeals cited both rules, state and federal, and seemingly relied on both to affirm at least most of the charges present in the case. State v. Hall 304 S.C. 332, 336, 404 S.E. 2d 202, 205 (Ct. App. 1991). Next in State v. Robinson 310 S.C. 535, 426 S.E. 2d 317 (1992) the Court dealt with the directed verdict issue in a drug prosecution. The Court

held that any evidence which "reasonably tends to prove... guilt" will sustain the conviction. However, the Court followed the enunciation with the conciliation, [S]tated differently, we find that any rational trier of fact could have found all the elements of a crime beyond a reasonable doubt." 310 S.C. at 539, 426 S.E.2d at 319. Petitioner submits that it is not only stated differently, but is different in its effect when applied as a standard for the review of the sufficiency of the evidence.

"Reasonably tends to prove" does not equate with proof beyond a reasonable doubt in the minds of a rational trier of fact, we submit. Case v. Louisiana, 496 U.S. 39 (1990), Concrete Pipe + Products of Cal; Inc. v. Construction Laborers Pension Trust for Southern Cal., 508 U.S. 602, 643, 644 (1993). This Defendant doesn't challenge the States right to establish a procedural rule which allows a defendant to make a directed verdict motion, or that provides for how such a motion should be dealt with by the trial judge. However, Defendants' argument is that the state must ensure that the evidence supporting a conviction must at least meet the Jackson v. Virginia standard, or otherwise due process has been violated. 2 Defendant submits that this would not necessarily be a problem if the appellate court thereafter conducted its own evidentiary review applying the proper "evidence beyond a reasonable doubt" standard of review. However, as noted below, the appellate courts do not review the denial of a directed verdict motion in such fashion. See e.g. State v. Fennell in Fra.

Due Process and State Procedural Rules

A state may adopt procedural rules, such as has been done by South Carolina, which attempted to explain when a directed verdict is proper and when it is not. See Medina v. California 505 U.S. 437, 112 S. Ct. 2572, 120 L. Ed 353 (1992) ("... the power of a state to regulate procedures for carrying out its criminal laws, including the burdens of producing evidence and persuasion, is not subject to proscription under the Due Process clause unless it offends some principle of justice so rooted in the tradition of the conscience of our people as to be ranked as fundamental)". 405 U.S. at 445, 112 S. Ct. at 2577. In Medina citing, Patterson v. New York, 432 U.S. 197 (1979) the Court held that the forgoing test is the proper analytical approach to be used in cases for scrutinizing the constitutionality of state rules of procedure. Under the Patterson and Medina analytical approach, this court held that the state statute allocating the burden of proof in a State criminal case on the issue of incompetence to stand trial did not violate procedural due process. Also See, Montana, v. Egelhoff, 518 U.S. 37, 116 S. Ct. 2013 (1996) (holding that it does not violate due process for a state to restrict the right to present evidence that is incompetent, privileged, or otherwise inadmissable under standard rules of evidence unless such a rule offends fundamental principles).

South Carolina has adopted SCRCrimP 19 which states, "... the court shall direct a verdict in the defendant's favor... if there is a failure of competent evidence tending to prove the charge in the indictment." While under Egelhoff, this may not alone violate a fundamental principle, it does if this Court's review applies the procedural rule standard of review and such is never corrected by any subsequent reviewing court. Proof beyond a reasonable doubt satisfies this "fundamental" test, In Re Winship, supra.; Case v. Louisiana, supra., and so does the Jackson v. Virginia standard of review, we submit.

The South Carolina Appellate Courts have so focused on the state procedural rule with regard to direct verdicts, that the federal standard of review have been improperly supplanted by the state standard of review for use at the trial level at the close of the prosecution's case in chief, when most directed verdict motions are made. We submit that this court should properly apply the standard of review by the Due Process Clause of the fourteenth Amendment of the United States Constitution. We believe that the state's evidence in this case fails to establish proof beyond a reasonable doubt. Consequently, a new trial should be granted on the issues of guilt as to burglary.

II.

Even applying the standard of review set out by State v. Fennell, infra, the State's evidence failed to present any direct evidence or substantial circumstantial evidence of Defendant's guilt as to burglary.

A directed verdict was warranted at the close of the State's case in chief on the ground that the State's evidence failed to meet requisite standard of proof as to the presence of malice on the charge of burglary. Thus, respectfully, the Court committed error when used Defendant burglary charge request for a directed verdict on the charge of burglary.

South Carolina's Present Standard of Review Re: Directed Verdict

Our Court's have discussed the standard of review to be applied by this court at this point in the proceedings. It is set out in State v. Fennell, 340 S.C. 266, 531 S.E.2d 512 (2000). The standard is as follows: [I]n considering a motion for a directed verdict, the trial court is concerned with the existence or non-existence of evidence, not with its weight. The case should be submitted to the jury if there is any direct evidence or substantial circumstantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may fairly or logically be deduced. State v. Robinson, 310 S.E. 535, 426 S.E.2d 317 (1992). In reviewing the denial of a motion for a directed verdict, the evidence must be reviewed in light most favorable to the State. If there is any direct evidence or

the guilt of the accused, the appellate court must find that the case was properly submitted to the jury. State v. Venters, 300 S.C. 269, 387 S.E. 2d 270 (1990).

We submit that there is no "direct evidence or substantial circumstantial evidence"[3] which suggests this Defendant committed burglary. Our Courts have acknowledged that burglary as a matter of law can be established even by the State's evidence. In such a case, a directed verdict must be granted. State v. Hendrix, 270 S.C. 653, 244 S.E. 2d 503 (1978).[4]

[3] This standard of review is itself confusing because it conflicts with other pronouncements of law by our courts. For example, State v. Grippon, 327 S.C. 79, 489 S.E. 2d 462 (1997) says there is no difference in direct evidence and circumstantial evidence when it comes to quanta. However, Fennell clearly demonstrates this is not so because of its disparate treatment of "any direct evidence" and "substantial circumstantial evidence".

[4] Hendrix was acquitted of murder but convicted of voluntary manslaughter. Thus, the court's holding goes ~~bar~~ beyond the position advanced by the Defendant which seeks a directed verdict as to the issue of burglary only.

Even if, by application of a properly promulgated ~~rule~~ State rule of procedure (e.g. S.C.R. Crim P. 19), this case was properly submitted to the jury, the Defendant submits that this Court is required to review the sufficiency of the evidence under the Jackson v. Virginia, 443 U.S. 307 (1979) standard review.

Consequently, Defendant submits that this Court must address the federal question of the sufficiency of the evidence under the fourteenth Amendment before applying a State created rote standard pronouncement (eg. State v. Fennell, 340 S.C. 266, 531 S.E. 2d 512 (2000) discussed infra, "any direct evidence or substantial circumstantial evidence").

Initially, Defendant submits that the foregoing evidence is required to be reviewed against the back drop of "proof beyond a reasonable doubt."

There is no independent basis for comparing any particular standard of proof with any particular standard of review. Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California 508 U.S. 609, 113 S Ct. 2264, 124 L.E. 2d 539 (1993), Thomas, J. concurring, U.S. at 651, 113 Ct. at 294 at note*. An exception to the forgoing, however, is the burden of proof and standard of review required in a State prosecution by the due process clause of the fourteenth Amendment in Criminal cases.

In a State criminal prosecution and the post trial posture of conviction, the burden of proof required is that of "proof beyond a reasonable doubt," Jackson v. Virginia 443 U.S. 307 (1979); In Re Winship, 397 U.S. 358 (1970) and the evidentiary standard of review is

Bowie v. Sosoce

1318-2-Sentencing and Punishment

1P

Prior, uncounseled conviction was properly used for purpose of sentencing enhancement under two strikes statute absent any evidence that the defendant was actually incarcerated for that prior conviction only evidence before trial court was defendants own testimony that he served only probationary sentence, Code, 1976 § 17-25-45

The use of an uncounseled conviction resulting in a sentence of imprisonment to enhance the punishment in a subsequent conviction the sixth and fourteenth amendments to the United States constitution: however an uncounseled convition that does not result in actual imprisonment may be used to enhance a subsequent conviction U.S.C.A. Const. Amends, 6.14

371
South. C, Reports

(1A)

S.C. 1902, Due process of law means the same as the law of the land, and as a general rule involves an opportunity before a proper tribunal under established procedure to make contest in defending or enforcing a legal right — Simmons v. Western Union Tel, Co, 41, S E 521, 63 S.C. 425, 5 IRA 607

State evidence and reasonable inference

2-B The State used a (1983) indictment to enhance my sentence

History 1985-Act no 159

2-C The 1985 amendment completely rewrote this section -16-11-310. It definitions relevant to the crime of burglary 16-11-310 is for purposes of -16-11-311 through 16-11-313

16-11-310 is not a burglary and can not be used for burglary.

3-C Expost Facto Law

USSC 1964. an unforseeable Judicial enlargement of a criminal statue, applied retroactively operates precisely like an expost facto law; defined as one that makes an action done before the passing of the law and which was innocent when done criminal; and ~~punishment~~ punishes such action, or that aggravates a crime or makes it greater than it was when committed U.S.C.A Const. Art 1, § 10 — Bouie v. City of Columbia 84 S.C. 1697, 378 U.S 347, 12 L Ed, 2d 894. Const. law 278(4) 2789-2790

(2 N)

3-D

An expost facto violation occurs when a change in the law retroactively alters the definition of a crime or increases the punishment for a crime. STATE V. CASTOR (SC) 2002) 349 S.C. 545, 564 S.E. 2d 87, Constitutional law-2789 Constitutional law 2790

whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Jackson v. Virginia, supra. The State Supreme Court's use of an "any direct evidence" standard violates the requisite due process standard of review. This is especially so when the evidence is then viewed in hindsight in the light most favorable to the prosecution.

Defendant submits that even if the foregoing standard of review is applied to this case, Defendant is entitled to a directed verdict of acquital on the charge of burglary.

Secondly, the State was required to come forwad with some evidence to show malice other than ~~a~~ judicially created inference which arises from the use of a deadly weapon. In this case, there was direct evidence that this Defendant:

1. Under the foregoing facts, Defendant submits that the inference of malice is not sufficient to overcome the presumption of burglary in this case, which was required to be defeated by evidence beyond a reasonable doubt.

III.

Defendant submits that the circumstantial evidence charge as given in this case from State v. Grippon, 327 S.C. 79, 489 S.E.2d 462 (1997) undermines the historical reliability of circumstantial evidence in the setting of a State criminal prosecution.

Historically circumstantial evidence could only be relied upon to convict if circumstances were consistant with one another and if such evidence excluded every other reasonable hypothesis except that of guilt. See State v. Edwards 298 S.C. 272, 379 S.E.2d 888 (1989). The Court stated:

> Every circumstance relied upon by the State be proven beyond a reasonable doubt; and... all of the circumstances so proven be consistent with each other and taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis. It is not sufficient that they create a probability, though a strong one and if, assuming them to be true they may be accounted for upon any reasonable hypothesis which does not include the guilt of the accused, the proof has failed.

Defendant submits that coupling the new circumstantial evidence with a valid "reasonable doubt" instruction, does not cure the error which undermines the reliability of circumstantial evidence. For example, suppose a charge is given that states that Arbitrary conjecture" may be relied upon just as direct evidence if guilt is found beyond a reasonable doubt. Even this instruction can be found constitutionally valid under the reasoning

employed by the Court in Grippon, because the reasonable doubt instruction would otherwise save the defective charge permitting conjecture.

The Court's reasoning in Grippon was fallacious. Defendant submits that a finding of guilt beyond a reasonable doubt can only be made after one determines the facts based upon the use of direct or circumstantial evidence. Thus, it is important circumstantial evidence not be used when it is subject to any hypothesis other than the guilt of the accused. Grippon, we submit, undermines the level of proof required in a criminal prosecution.

Wherefore, Defendant would request a new trial on the issues of guilt as to burglary.

Respectfully submitted,

DATE 9-25-12 Rocksell Wright

Rocksell Wright

Affidavit in Support
of motion

The petitioner Rocksell Wright first duly Sworn prose deposed and says:

1. I Rocksell Wright am the the affient and movent perty
2. I Rocksell Wright bring this motion for a new trial in good fa.
3. I Rocksell Wright am of the decision that I have been denied due process and am entitled to such.
4. I Rocksell Wright the affiant say further not.

Rocksell Wright

SWORN or Affirmed To Subscribed
before me This
day of

Notary Public

MY COMMISSION EXPIRES

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Inmate Services

AGREEMENT TO DEBIT E.H. COOPER ACCOUNT

Inmate's Name:	SCDC #:	Housing Unit:	Date:
Rockell Wright Jr	256078	C-B 47	10-16-13

GENERAL MATERIAL

** Inmate must have the funds in his/her account to pay for the materials.

Item	Amount	To be completed by SCDC staff: Cost
Envelope		
Pen		
Paper		
Postage		
Tape		
Box		
Electronic Repair		
Other		
	Sub-Total:	

LEGAL MATERIAL

** Inmate is not required to have the funds in his/her account to pay for the materials; however, his/her account must be debited for all materials s/he elects to receive.

Item	Amount	To be completed by SCDC staff: Cost
Envelope		
Pen		
Paper		
Postage		
Other		
	Sub-Total:	

PHOTOCOPIES

** Inmate may be required to have funds in his/her account. See SCDC Procedure GA-01.03(OP), "Inmate Access to the Courts," to determine if inmate may receive copies with/without funds.

Item	Amount	To be completed by SCDC staff: Cost
Photocopies		
		TOTAL

Rockell Wright Jr
Inmate's Signature

Mailroom/Canteen Signature (Request filled by)

Date

White - Inmate
Canary - Mailroom/Canteen Employee

SCDC Form 10-14 (November 1998)

RMJ

The Supreme Court of South Carolina
DANIEL E. SHEARHOUSE, CLERK of COURT
POST OFFICE BOX 11330
COLUMBIA S.C. 29211

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