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Jun 30 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Cherokee County

Honorable R. Keith Kelly, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LARRY CHARLES JONES,

APPELLANT.

APPELLATE CASE NO. 2024-001013

ANDERS BRIEF OF APPELLANT

SARAH E. SHIPE
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South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred denying appellant's motion for a directed verdict where there was no video or audio evidence supporting the allegation that appellant sold drugs to the two confidential informants used by law enforcement?

STATEMENT OF THE CASE

On May 9, 2022, a Cherokee County grand jury indicted appellant for distribution of methamphetamine. Indictment. On June 6, 2024, appellant's case was called to trial before the Honorable R. Keith Kelly, and a jury.¹ R. 4. Michael Berry and James Nietering represented appellant. R. 4. Assistant solicitors, Adrienne Barry and Evan Haney, prosecuted for the state. R. 4.

The jury found appellant guilty as indicted. R. 154, ll. 2-6. Judge Kelly sentenced appellant to twenty years' imprisonment. R. 161, ll. 2-4; sentence sheet.

This appeal follows.

¹ Appellant's first trial held May 22-23, 2024, before the Honorable J. Derham Cole resulted in a mistrial. (May 22-23) R. 1; 2.

STANDARD OF REVIEW

On appeal, “[w]hen reviewing a denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the state.” *State v. Cherry*, 361 S.C. 588, 593, 606 S.E.2d 475, 478 (2004). (citing *State v. Burdette*, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999)); *see also State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000) (finding that when ruling on cases in which the state has relied exclusively on circumstantial evidence, appellate courts are likewise only concerned with the existence of the evidence and not its weight).

If the state presented “any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused,” the appellate court must affirm the trial court’s decision to submit the case to the jury. *Cherry*, 361 S.C. at 593–94, 606 S.E.2d at 478; *cf. Mitchell*, 341 S.C. at 409, 535 S.E.2d at 127 (“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.’”)

ARGUMENT

The trial court erred denying appellant's motion for a directed verdict where there was no video or audio evidence supporting the allegation that appellant sold drugs to the two confidential informants used by law enforcement.

Relevant facts

At trial, the state presented evidence that law enforcement arranged a controlled buy with two confidential informants, Michael Hughey and Marie Davis, to purchase methamphetamine from appellant.

Deputy Roderick Oglesby Jr. was involved in the controlled buy and testified at appellant's trial. R. 38—73. Deputy Oglesby testified there were two confidential informants, Michael Hughey and Marie Davis, involved in the controlled buy. He explained both were searched prior to the controlled buy. However, he admitted that there was no female officer available to search Davis and he could not conduct a full search of her person. R. 41, ll. 2-23; 60, ll. 2-10; 66, ll. 3-25. He claimed Davis did not have a purse but if she had he would have searched it. R. 41, ll. 15-17. Oglesby contended there were no illegal items on either Hughey or Davis. R. 41, ll. 18-23. Another officer, Lieutenant Timothy Tate, searched Davis's car and testified that he found no illegal items prior to the buy. R. 42, ll. 18-22; 75, ll. 2—76, l. 17. Oglesby placed a recording device, a button camera, on Hughey to capture the buy and gave him twenty dollars. R. 41, l. 24—42, l. 13; 42, ll. 23-24.

Deputy Oglesby testified Hughey and Davis were instructed to drive to appellant's home located in Cherokee County and purchase twenty dollars of methamphetamine and meet back at a particular location. R. 41, l. 14—45, l. 11. State's Exhibit No. 1, the recording of the alleged

controlled buy was admitted and played at trial.² R. 47, l. 5; 48, l. 9. When Oglesby and the two met back the car and both were searched again. Oglesby testified he searched Ms. Davis's purse on their return. R. 44, l. 22—45, l. 3. Hughey returned with a small bag containing .34 gram of methamphetamine and turned it over to Oglesby. R. 45, ll. 8-19; 122, ll. 1-4.

Discussion

A trial court must direct a verdict of acquittal when the record does not contain evidence to support every element of the charged offense. *See, e.g., State v. Brown*, 360 S.C. 581, 586, 602 S.E.2d 392, 395 (2004); *State v. Evans*, 376 S.C. 421, 424, 656 S.E.2d 782, 783 (Ct. App. 2008) (“A defendant is entitled to a directed verdict when the state fails to produce evidence on a material element of the offense charged.”); *see also In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073 (1970) (“Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.”); Rule 19(a), SCRCrimP (“[O]n motion of the defendant or on its own motion, the court shall direct a verdict in the defendant’s favor on any offense charged . . . if there is a failure of competent evidence tending to prove the charge in the indictment.”).

When considering a motion for directed verdict of acquittal, “the trial court is concerned the existence or non-existence of evidence, not its weight.” *Brown*, 360 S.C. at 586, 602 S.E.2d at 395. When reviewing a denial of a directed verdict, appellate courts “view the evidence and all reasonable inferences in the light most favorable to the nonmoving party.” *State v. Brannon*, 388 S.C. 498, 501, 697 S.E.2d 593, 595 (2010).

² State’s Exhibit No. 1 is on file with this Court.

In *State v. Mitchell*, 341 S.C. 134, 535 S.E.2d 126 (2000), the South Carolina Supreme Court held the lower court erred in failing to direct a verdict where the only evidence presented against defendant was his fingerprint at the scene of the burglary. Similarly, in *State v. Lollis*, 343 S.C. 580, 541 S.E.2d 254 (2001), the South Carolina Supreme Court directed a verdict of acquittal in defendant's favor where the state presented no direct evidence that defendant was involved in setting fire to his home. The circumstantial evidence against defendant was that his wife admitted to the arson, defendant had placed valuables in storage prior to the fire, defendant possessed a key to the storage unit, and defendant allegedly had financial troubles. In that case the court found the evidence insufficient. *Lollis*, at 585, 541 S.E.2d at 257.

In *State v. Martin*, 340 S.C. 597, 533 S.E.2d 572 (2000), the South Carolina Supreme Court directed a verdict of acquittal in defendant's favor where the state failed to meet the "any substantial evidence" standard. In that case the state presented evidence that a car resembling the one defendant was driving was seen parked at the victim's apartment complex on the night of the murder. *Martin*, at 600, 533 S.E.2d at 573. The state also presented evidence defendant and co-defendant were late picking up defendant's girlfriend from work and when his girlfriend asked why they were late defendant replied, "some shit happened" and co-defendant added "somebody may have died tonight." *Id.*

In *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2012), the South Carolina Supreme Court held defendant was entitled to a directed verdict based upon a lack of substantial circumstantial evidence that defendant was involved in the burglary. Although defendant was in a car with other individuals who admittedly burglarized a home, the state failed to provide substantial circumstantial evidence that defendant was present during the home invasion. The witness who saw individuals at the home claimed she saw two, not three as were found in the car. *Odems*, at

584, 720 S.E.2d at 49. Fingerprints collected from the stolen goods did not match defendant's but matched the other individuals in the car. *Id.* at 588, 720 S.E.2d at 51. One of the individuals who admitted his involvement claimed defendant was picked up after the burglary at a gas station. *Id.*

In *State v. Bostick*, 392 S.C. 134, 141, 708 S.E.2d 774, 778 (2011), the South Carolina Supreme Court held the state failed to present substantial circumstantial evidence of defendant's guilt. Rather, the state's evidence could produce only a suspicion of defendant's guilt. *Id.* Although the police found items belonging to the victim in a burn pile behind the home of defendant's mother, the court held no evidence linked defendant to the evidence in the burn pile and the prosecution presented no testimony that defendant had control over the burn pile. *Id.* at 137-141, 708 S.E.2d at 775-778. The only other evidence presented against defendant was that he had a chemical pattern that matched gasoline on his shoes and gasoline was used to start the fire at the victim's home, and DNA from blood on defendant's jeans excluded ninety-nine percent of the population, but the expert could not testify the DNA matched the victim. *Id.* at 142, 708 S.E.2d at 778.

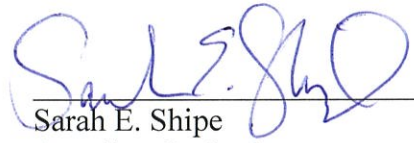
Appellant's trial had less evidence than the cases mentioned above where the appellate court found the lower court should have directed a verdict in defendant's favor. In *Martin*, there was evidence presented that could be construed as an admission of guilt as well as a car matching the description of the car defendant was driving was seen at victim's apartment on the night of the murder. *Martin*, at 600, 533 S.E.2d at 573. In *Bostick*, the victim's belongings were found in a burn pile behind defendant's mother's home and defendant had blood on his jeans.

Conversely, the only evidence that drugs were sold was the problematic testimonies of Hughey and Davis. Hughey was admittedly involved as a confidential informant to receive some

benefit in exchange for his cooperating because he had numerous criminal charges. R. 63, l. 10—65, l. 6. Davis, Hughey's romantic partner, naturally wanted to help get Hughey out of legal trouble. State's exhibit 1, the recording entered at trial, showed nothing other than a conversation at appellant's home. It is possible Davis had the drugs prior going to appellant's home. Davis was not fully searched because there was no female officer to search her. Furthermore, Oglesby admittedly failed to search Davis's purse before alleged buy. He testified she did not have a purse. However, later he testified he searched her purse after the alleged controlled buy.

CONCLUSION

Based on 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 30th day of June, 2025.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Larry Charles Jones 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 R. Keith Kelly, which was held on June 6, 2024, 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 Larry Charles Jones.

Respectfully Submitted,



Sarah E. Shipe
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: 2022-GS-11-00544;
- (2) Transcript dated May 22-23, 2024 pp. 1, 80, and 81;
- (3) Trial Transcript dated June 6, 2024 pp. 1-159;
- (4) State's Exhibit No. 1 (DVD);
- (5) Sentence Sheet.

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


Sarah E. Shipe
Appellate Defender

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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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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 Larry Charles Jones, #348745, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 30th day of June, 2025.



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