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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Heath P. Taylor, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ALAN G. NIX,

APPELLANT

APPELLATE CASE NO. 2024-001926

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in failing to direct verdicts of acquittal where the state failed to present direct or substantial circumstantial evidence that Appellant resisted the service of process and threatened the life of a public official?

STATEMENT OF THE CASE

A Charleston County grand jury indicted Appellant for one count of resisting service of process and one count of threatening a public official¹ during its October 2023 term. R. (indictments). The state, represented by Andrew McAllister and Cassity Brewer, called the case to trial before the Honorable Heath P. Taylor and a jury on November 4, 6-7, 2024. Appellant was represented by Benjamin Mack and Katherine Mangan. R. 1. The jury found Appellant guilty as indicted. R. 226, l. 19-227, l. 4. Judge Taylor sentenced Appellant to one year of incarceration on the resisting arrest charge and five years' incarceration, suspended upon the service of one year with the balance suspended to five years of probation, on the threatening a public official charge, sentences to run concurrently with credit for 159 days' times served. R. 236, l. 23-237, l. 19.

¹ The threatening a public official indictment did not originally name a victim. The parties agreed to amend the indictment to name Christopher Craven as the victim. Prior to the jury being sworn, defense counsel clarified for the record that the case was moving forward on the amended indictment. At that point the solicitor reminded the court they had agreed to amend the indictment, and he wrote "Christopher Craven" into the original indictment. None of the indictments received from the Charleston County Clerk of Court's office contained the handwritten amendment. R. 64, l. 21-65, l. 8.

STANDARD OF REVIEW

“When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight.” State v. Passio, 433 S.C. 666, 673, 861 S.E.2d 785, 789 (Ct. App. 2021), *aff’d as modified*, 440 S.C. 1, 889 S.E.2d 584 (2023) quoting State v. Hernandez, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009). “A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged.” Id. “If there is any direct evidence or 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. Passio, 433 S.C. 666, 673, 861 S.E.2d 785, 789 (Ct. App. 2021) quoting State v. Frazier, 386 S.C. 526, 531, 689 S.E.2d 610, 613 (2010). “When reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State.” Id.

ARGUMENT

The trial court erred in failing to direct verdicts of acquittal where the state failed to present direct or substantial circumstantial evidence that Appellant resisted the service of process and threatened the life of a public official.

Relevant Facts

In early January of 2021, officials with the Charleston County Sheriff's Department civil process division served Appellant an eviction notice at his home in Mount Pleasant, South Carolina. The notice listed January 22, 2021, at 12:00 p.m. as the point in time when Appellant was to have vacated the property or face forced removal. Officers left the notice taped to Appellant's door as they were unable to personally serve him at his home. R. 78, l. 18-81, l. 12. Officer Christopher Craven was able to send Appellant an email informing him of the eviction notice to which Appellant responded that he would meet with Craven after he spoke with the Sheriff on other matters to accept personal service. R. 145, ll. 17-24. In the intervening days after posting the notice, officers went by Appellant's home to check if he was abiding by the eviction order but did not see signs of Appellant attempting to move. R. 114, ll. 20-24; R. 157, ll. 20-23.

On January 22, 2021, the day the order was to be enforced, at approximately 9:37 a.m. Craven received an email from Appellant that included the following,

Rules of engagement today, I will not fire on anyone outside of the perimeter of my home unless I am fired upon first. If I'm fired upon by persons outside of the perimeter of my home, I will return the fire to the extent that I can do so without knowingly jeopardizing innocent persons. I'll fire on anyone and everyone that breaches the perimeter of my home without being personally invited in by me. At this point, I believe it is safe to assume that will be no one except for potentially my son and or daughter who I know will not be here. Assuming I do not die today or arrested on some trumped-up charge, I'll make myself available for press

statements between Sunday and next Wednesday, 27, January, 2021. I know -- I now have a fair bit of work to do on the RICO case and thus must focus on that as much as possible in the near term. For the press, I left a copy of the SC Court of Appeals filing with Joe Dawson, the county attorney, most likely still the by far highest-paid county attorney in the state yesterday afternoon, Bridge View Road, Charleston, South Carolina 29405. I left a note on the copy of what I think is a very good headline for this event, "Shoot-out and standoff between Charleston County Sheriff's Department and Homeowner." I also left copies for Bill Tootin (ph), Charleston County Administrator, and the Charleston County Council. Best regards, Alan Nix.

R. 151, l. 1-152, l. 7. Also copied on the email were other members of law enforcement as well as some of Appellant's neighbor and members of his home owner's association. R. 158, ll. 3-6. After receiving that email, officers delayed executing the forceful eviction of Appellant. R. 155, l. 5-156, l. 15.

The following day, January 23, 2021, at 3:46 p.m., Appellant sent another email that read in part,

I have barricaded in my family's home now for 28 hours waiting for the assault by the Charleston County Sheriff's Office or Sherriff's Department, Charleston County SWAT team. That was supposed to happen 27.5 hours ago. I've also haven't had my service dog to pet for over 48 hours since my son took her away so he – she wouldn't be killed in the cross fire. Even though Dr. Mad - -Thomas, I'm going to let you spend Christmas in jail with your friends. Lynn never recommended any treatment for my apparent exhibits very erratic -- erratic behavior syndrome he diagnosed -- convinced me on December 17, 2019, or December 18, 2019 or sometime between December 17, 2019 and January 3, 2020. I have found that spending some time outside in the sun, and petting my service dog helps a good bit to help with my apparent exhibits very erratic behavior syndrome.

...

Can we get the assault started by at least 1730 today, 23 January, 2021, and have James Allen Kits then Ninja Thornton bring his German shepherd down here with him. The same one that he mentioned would eat my service dog on the evening of 17 October, 2020. That way I can pet his German shepherd while I'm laying on

the ground waiting for an ambulance or a hearse. Best regards,
Alan Nix.

R. 152, l. 9-153, l. 25. On January 25, 2021, Officer Stephanie Hood performed a felony traffic stop on Appellant and took him into custody without incident. R. 116, ll. 7-16; R. 118, ll. 11-25. Officers were able to effectuate the eviction over the course of January 26 and 27, 2021. R. 158, ll. 8-11.

At trial the state presented evidence that the inside of Appellant's home was in disrepair and disarray. Officer's located a shotgun, various types of ammunition, gas cans, and matches inside the home. On a later date, Appellant's son accompanied officers through the house to recover a .45 caliber handgun from under the kitchen sink. R. 84, l. 13-86, l. 21; R. 88, ll. 3-10; R. 101, ll. 9-24. At the close of the state's case, defense counsel moved for directed verdict's on both charges. Counsel argued that for the resisting charge the law required resistance during the service or execution of the legal process, which had not occurred in this case, as Appellant had been successfully served with the eviction notice and the eviction, while delayed a few days, was properly carried out. R. 187, l. 8-188, l. 9.

Regarding the threat charge counsel argued that the statements in the emails were all qualified. They were not outright threats, but statements of how Appellant would act should certain events occur. Further, the state failed to prove that Appellant had the present ability to carry out the purported threats because, at the time the eviction was enforced, Appellant was in jail. R. 187, l. 20-189, l. 9; R. . Defense counsel reiterated,

[T]he State has failed to admit any competent evidence that Alan missed the service, he was served, he's set [sic] to service. They have failed to admit any competent evidence that he resisted execution. He was in custody when they executed the warrant. And I believe that they failed to present evidence that that [sic] law enforcement was actually threatened because he wasn't there. For those reasons, we do ask for directed verdict on those charges.

R. 190, ll. 10-18.

In response the state argued that Appellant was required to vacate the home by January 22 and by failing to do that he was actively resisting the execution of the eviction order which supported the resisting charge. Regarding the threatening a public official, the state averred that the statements were not qualified threats and that Appellant had told law enforcement that “he was going to kill them.” The emails sent by Appellant trying to “schedule a gunfight with law enforcement” was sufficient evidence for the charge to be submitted to the jury. R. 190, l. 20-191, l. 22. The trial court denied the motions for direct verdicts finding that the state had presented evidence supporting each charge. R. 192, ll. 18-21.

Discussion

“The circuit court should not refuse to grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. Suspicion implies a belief or opinion as to guilt based upon facts or circumstance which do not amount to proof.” State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004). “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. 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. State v. Hepburn, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013).

Our Supreme Court “has repeatedly affirmed the principle that when the State fails to produce substantial circumstantial evidence that the defendant committed a particular crime, the defendant is entitled to a directed verdict.” State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011). In Odems, this Court cited State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011), and State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001), as “jurisprudence . . . instructive in explaining the proof required in cases built wholly on circumstantial evidence.” Id. Specifically, the trial court “should grant a directed verdict motion when the evidence merely raises a suspicion that the accused is guilty.” Odems, 395 S.C. at 586, 720 S.E.2d at 50 (citation omitted). “Suspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof.” See State v. Buckmon, 347 S.C. 316, 322, 555 S.E.2d 402, 404-05 (2001) (internal quotation omitted).

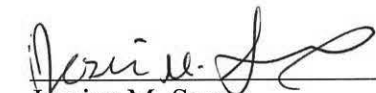
Despite the assertions of the state, Appellant did not resist service of process, nor did Appellant threaten to kill law enforcement officers. Regarding the resisting of process, Appellant was successfully served notice of the eviction. It was left on his door, and he was informed of the notice by email correspondence with Craven. When officers did move to enforce the order, albeit a few days after the list date of January 22, they were not met with resistance as Appellant was incarcerated. They were able to go into the home a few days later and execute the legal process. The court erred in failing to deny a directed verdict on this charge.

Turning to the threatening charge, Appellant knowingly and willfully communicated his state of mind to law enforcement. While he admittedly stated he would fire on anyone who came inside of his home, he did not threaten to engage first nor did he threaten to take a life. The

statements were qualified, he would act if law enforcement acted, but they were not outright threats against Craven. As defense counsel argued, Appellant had no present ability to carry out the purported threats because he was incarcerated at the time of the actual eviction. The trial court erred in failing to direct a verdict on this charge.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests that this Court reverse his convictions and sentences and enter directed verdicts of acquittal to the charges.



Jessica M. Saxon
Appellate Defender
ATTORNEY FOR APPELLANT

This 15th day of September, 2025.

STATE OF SOUTH CAROLINA

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APPELLATE CASE NO. 2024-001926

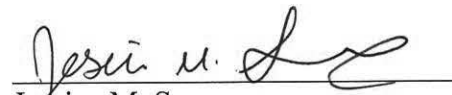
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Alan G. Nix 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 Heath P. Taylor, which was held on Nov. 4, 6-7, 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 Alan G. Nix.

Respectfully Submitted,



Jessica M. Saxon
Appellate Defender
ATTORNEY FOR APPELLANT

This 15th day of September, 2025.

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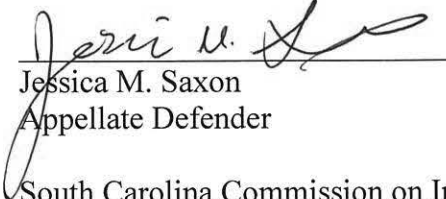
APPELLATE CASE NO. 2024-001926

**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): 2023-GS-10-05002 & -05003
- (2) Trial Transcript Dated November 4, 6-7, 2024

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



Jessica M. Saxon
Appellate Defender

South Carolina Commission on Indigent Defense
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PO Box 11589
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(803) 734-1330

ATTORNEY FOR APPELLANT

This 15th day of September, 2025.

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.”

s/ Jessica M. Saxon

Jessica M. Saxon
Appellate Defender

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Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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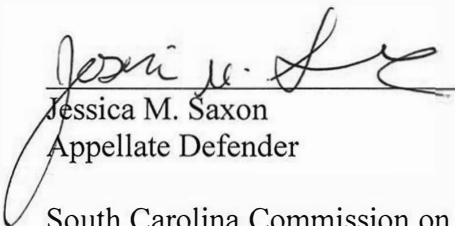
ALAN G. NIX,

APPELLANT

APPELLATE CASE NO. 2024-001926

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 Alan G. Nix, via email at alan.g.nix@outlook.com this 15th day of September, 2025.



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ATTORNEY FOR APPELLANT