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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Cherokee County
The Honorable R. Keith Kelly, Circuit Court Judge
Appellate Case No. 2024-001912

THE STATE, RESPONDENT

v.

EDWARD VINCENT BAYNARD APPELLANT

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

BARRY BARNETTE
Solicitor, Seventh Judicial Circuit

TOMMY EVANS, JR.
Assistant Attorney General
P.O. Box 11549
Columbia South Carolina 29211
(803) 734-6305

ATTORNEYS FOR RESPONDENT

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

1. The trial judge erred in denying appellant's directed verdict motions where the deceased, who was a medically fragile patient, required highly specialized medical care (including insertions of feeding and tracheostomy tubes) that exceeded appellant's clinical capabilities and training, particularly since appellant began his low level aid position at age eighteen and was classified as "unskilled", had minimal contact with the patient, and performed per instructions from his patients, because all of the above established that appellant's actions evidenced neither malice nor willfulness nor intentional infliction of harm toward the patient.

RESPONDENTS' COUNTER-STATEMENT OF ISSUE ON APPEAL

1. Did the trial court err in the denial of the Appellant's motion for a directed verdict when in looking at the existence of evidence and not its weight, and in the light most favorable to the State, the evidence revealed that Appellant's inaction by allowing the victim to lie in her urine and feces for over a two month period led to the victim's death and not the Appellant's lack of certain medical knowledge?

STATEMENT OF THE CASE

Edward Vincent Baynard (Appellant) was indicted by the Cherokee County Grand Jury for the offense of murder. (Indictment No. 2022-GS-11-01304) (R. p. 415-416). On March 25, 2024, Appellant was later indicted for the crimes of unlawful neglect towards a child (Indictment No. 2024-11-0452) (R. p. 413-414) and child abuse with great bodily injury (Indictment No. 2024-GS-11-0451) (R. p. 411-412).

On October 28, 2024, Appellant appeared before the Honorable R. Keith Kelly for a trial on all of the above referenced offenses. Appellant was tried simultaneously along with his father David Baynard (David) and mother Bobbie Jo Baynard (Bobbie Jo). Appellant was represented by attorneys Michael Morin, Abigail Gowdy, and Eva Wazzak, David was represented by Tracy and Russ Racine, and Bobbie Jo was represented by Robin File. Representing the State of South Carolina was Seventh Circuit Solicitor, Barry Barnette, and Assistant Solicitor, Jennifer Jordan, of the Seventh Circuit Solicitor's Office.

Once the State rested their case, Appellant's attorneys moved for a directed verdict for the crimes of murder and child abuse with great bodily injury. After hearing arguments by both sides, the trial judge denied the motion for a directed verdict. The trial court expressed that it is not the court's job to determine the weight of the evidence only its existence and the court must view the evidence in the light most favorable to the non-moving party. (R. p. 320 l. 16-18)

After four days of testimony, a jury of his peers found Appellant guilty of murder (R. p. 392 l. 21-24), unlawful conduct toward a child (R. p. 392 l. 25 – p. 393 l. 4), and infliction of great bodily injury to a child. (R. p. 393 l. 5-9). Following the reading of the verdicts, Appellant appeared before the trial judge for sentencing. For the offense of murder, the trial judge sentenced Appellant to a thirty-year (30) period of incarceration. (R. p. 408 l. 25 – p. 409 l. 2). Appellant was sentenced

to a twenty-year period of incarceration for great bodily injury to a child, to be served concurrently. (R. p. 409 l. 5-7). For the unlawful conduct to a child, the Appellant was sentenced to a ten-year period of incarceration, also to be served concurrently. (R. p. 409 l. 3-4).

While serving his sentence Appellant filed a timely notice of appeal before the South Carolina Court of Appeals. The brief from the Respondent follows.

STATEMENT OF FACTS

On April 11, 2022, David and Bobby Jo Baynard brought the victim into the Spartanburg Regional Hospital Emergency Room. The victim was their 14-year-old daughter who was suffering from cerebral palsy, chronic lung disease and seizure disorder. (R. p. 251 l. 6-9). The victim was nonverbal and totally dependent on care; she also had a feeding tube because she could not eat orally. (R. p. 251 l. 13-17). When nurse Amy Vinesett saw the victim, she had blood on her back and was unresponsive. (R. p. 28 l. 7-11). Nurse Vinesett touched the victim's hand, and it was cold to the touch, her skin was also blue and gray. (R. p. 28 l. 12-15) At that time Nurse Vinesett thought the victim was already deceased. (R. p. 28 l. 22-23).

The victim was taken into the emergency room where she was examined by emergency room doctor Ryan Rider. At that time, the victim was listless and lifeless. Dr. Rider tried methods of CPR to jump start her heart. (R. p. 38 l. 19-22). Dr. Rider observed that the victim's lower extremities had almost a total lack of skin, there was only red flesh. (R. p. 39 l. 10-12). There was also bruising all over her body. (R. p. 40 l. 1-2). Dr. Rider also determined that the victim was deceased when she arrived at the emergency room. (R. p. 40 l. 10-11).

During the trial Deputy Brian Burrell, Crime Scene Investigator for the Cherokee County Sheriff's Department, testified. Deputy Burrell obtained a search warrant for Appellant's residence. At that time, Deputy Burrell, along with the Cherokee County Coroner Dennis Fowler

and other Deputies, searched Appellant's residence and took photographs. Both Coroner Fowler and Detective Burrell testified to the condition of the house when they arrived. Deputy Burrell stated that when they arrived, there was the smell of dogs and trash. (R. p. 96 l. 2-3). At one point, they thought a small dog ran out in front of the house, but it was actually a large rat. (R. p. 96 l. 9-12). When they got into the house they could smell an ammonia-like smell like old dog and cat urine, as well as dog feces. (R. p. 96 l. 22-24). Trash was knee deep in some areas, and waist deep in other portions of the house. (R. p. 98 l. 9-11). Insects were jumping on them to the point they had to go back to the car and get Tyvek suits. (R. p. 98 l. 17-24).

When they got to the master bedroom, they found four to five cats, most with only one eye. All these cats were in poor condition. This is where they found the strongest smell of ammonia in the entire house. (R. p. 103 l. 15-24). In the bedroom there was a crib with "puppy pads," pads used to potty train puppies. There were layers and layers of these pads, with a different kind of smell. These had the smell of human feces and urine. (R. p. 108 l. 16-23). In the crib, there were also oxygen tubes and IV tubes covered with bugs and roaches. (R. p. 111 l. 2-5).

During the trial, forensic pathologist Dr. Kelly Rose testified. Prior to her testimony all parties stipulated to Dr. Rose's qualifications, and she was found qualified as an expert in the field of forensic pathology (R. p. 199 l. 4-15). Dr. Rose performed the autopsy on the victim. (R. p. 199 l. 21-23).

During her testimony Dr. Rose stated that the victim looked like she was dropped in acid from her buttocks to her toes. The victim's skin was raw and red; there were areas that looked like her skin appeared to have almost dissolved. (R. p. 202 l. 2-6). Dr. Rose stated that urine and feces are very irritating to the skin. She determined the injuries the victim had were from chronic exposure to urine and feces. (R. p. 202 l. 7-11). The victim's teeth were also in terrible shape; they

were rotten. It appeared that the victim was incapacitated and would not have been able to take care of herself. (R. p. 202 l. 14-17). The victim had so much earwax that it was doubtful that she had heard anything for a long time. (R. p. 202 l. 18-19). She found cuts in the victim's scalp that appeared to have been made with scissors. However, there was no vital reaction to those cuts, so the victim's hair had been cut after she died. (R. p. 203 l. 4-7).

Dr. Rose testified that the victim's bottom was red and swollen. She had horrific pneumonia in both lungs and was obviously septic. (R. p. 203 l. 14-16). Bacteria had gotten into the victim's blood and settled into her lungs. The victim also had a urinary tract infection. (R. p. 203 l. 16-18). Dr. Rose determined that the victim had been sitting in her urine and feces for so long that it had gained access to her bladder, then her bloodstream and settled into her lungs. (R. p. 203 l. 18-21).

Dr. Rose thought that the victim had not been bathed, had a change of clothes or bedding for a very long time. (R. p. 207 l. 11-13). In her opinion, the condition had been going on for at least eight weeks. (R. p. 207 l. 14-16). The number of open wounds is what led to sepsis. (R. p. 208 l. 10-13). Dr. Rose testified that she had done numerous autopsies on elderly people that had sat in their own urine and feces, but she has never seen it to this degree. (R. p. 209 l. 5-8).

Dr. Rose also found signs of roach activity revealing that the neglect and filth and abuse had lasted for weeks. (R. p. 210 l. 21 – p. 211 l. 5). The urinary tract infection is what led to sepsis. (R. p. 212 l. 7-10).

Dr. Rose opined that the victim was in pain and suffering for weeks before she died. (R. p 228 l. 18-20). Dr. Rose found that the victim sat in her own urine and feces with open sores on her legs. The bacteria gained access to her blood, traveled to her lungs which caused the pneumonia which had developed there for weeks. (R. p. 229 l. 21-25).

In Dr. Rose's opinion, this surpassed neglect. During her testimony Dr. Rose stated that this was, "malice or a very hardened heart to let the victim suffer like that." (R. p. 230 l. 24 – p. 231 l. 2). Dr. Rose thought that it would have been better for the victim if they just shot her in head, because the victim suffered tremendously before she died. (R. p. 231 l. 9-11). During her testimony Dr. Rose was asked if this was a show of a wanton reckless disregard for a human life? She answered, "Yes, that's putting it mildly in my opinion." (R. p. 231 l. 19-22).

In Dr. Rose's opinion the victim's death was caused by a complication of acute chronic medical neglect. The victim suffered before death. And all of this could have been prevented. The manner of death was a homicide, the cause of death was murder. (R. p. 231 l. 24 – p. 232 l. 8).

1. **The trial court did not err in the denial of Appellant's motion for a directed verdict when in looking at the existence of evidence and not its weight, and in the light most favorable to the State, the evidence revealed that Appellant's inaction by allowing the victim to lie in her urine and feces for over a two month period led to the victim's death and not the Appellant's lack of certain medical knowledge.**

Relevant Facts

At the end of the State's case, Appellant's counsel moved for a directed verdict for the offense of murder and the infliction or allowing infliction of great bodily injury upon a child. The Appellant argued that the State had presented no evidence revealing that the Appellant at anytime entered his parent's bedroom where the victim was lying. (R. p. 306 l. 21-23). The Appellant also argued that that he could not be convicted of the infliction of great bodily injury without the State even proving that he had laid eyes on the victim. (R. p. 307 l. 1-2). The Appellant argued that he was not covered by the unlawful neglect statue because he was not a parent nor a guardian, he was just a part-time assistant. (R. p. 307 l. 18-20). The Appellant argued that the illness of the victim was a result of things that were going on in her lungs that were caused by "that trach" (R. p. 308 l. 4-6). The Appellant argued that he could not be convicted of murder because they had to show

malice in not entering and not forcing his way into his parent's bedroom to see her. (R. p. 308 l. 23-25).

At the conclusion of the motion arguments the trial judge issued the following ruling:

> "This court does not weigh the evidence. That is for the jury to decide. This court must view the evidence in the light most favorable to the nonmoving party, here the State, and if there is any evidence supporting the indictment, must deny the motion and send the matter to the trier of fact." (R. p. 320 l. 16-21).
>
> "Here the court finds there is some evidence and hereby denies the motion for directed verdict as to David Baynard, Bobby Jo Baynard, and Edward Baynard." (R. p. 320 l. 22-24).
>
> "As to the murder charge, this court, again, does not weigh the evidence but views the evidence in the light most favorable to the State, which is the nonmoving party, and this Court finds there is sufficient evidence and denies the domestic, I'm sorry the, the, the directed verdict motion." (R. p. 320 l. 25 – p. 321 l. 5).

The trial court further stated:

> "As to Edward Baynard, counsel argues that, under 63-5-70 that it does not meet the definition. But, again, counsel contends that the unlawful conduct must be dismissed because he does not meet the definition of the statute. But again, that is read too narrowly and this Court does not weigh the evidence. And if there's any evidence in the matter to – it is to be submitted to the jury, which is the finder of fact." (R. p. 321 l. 6-13)
>
> "Here there is some evidence that he was spending hours with H. and a motion is denied. I think it comes under the responsible party at that point responsible for the welfare." (R. p. 321 l. 14-17).

<u>*Standard of Review*</u>

In criminal cases, the appellate court sits to review errors of law only. *State v. Baccus,* 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). 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. Morgan,* 352 S.C. 359, 364, 574 S.E.2d 203, 205 (Ct. App. 2002). On appeal from the trial court of a motion for a directed verdict, the appellate court may only reverse the trial court if there is no evidence to support the trial court's ruling. *State v. Lindsey,* 355 S.C. 15, 20, 583 S.E.2d 740, 742 (2003). When

reviewing a motion for directed verdict or judgment notwithstanding the verdict, the appellate court applies the same standard as the circuit court. Accordingly, "in deciding a motion for direct verdict the evidence and all reasonable inferences must be viewed in the light most favorable to the nonmoving party." *Hennes v. Shaw,* 397 S.C. 391, 725 S.E.2d 501 (Ct. App. 2012), *quoting, Minter v. GOCT, Inc.,* 322 S.C. 525, 527, 472 S.E.2d 67, 69 (Ct. App. 1996). Malice may be inferred from conduct showing a total disregard for human life. *State v. Campbell,* 443 S.C. 182, 904 S.E.2d 441 (2024). Malice has been frequently, substantially so defined as consisting of the intentional doing of a wrongful act toward another without legal justification or excuse. *State v. Leach,* 282 S.C. 178, 180, 318 S.E.2d 267, 268 (1984). If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Supreme Court must find the case was properly submitted to the jury. *State v. Gentry,* 363 S.C. 93, 104, 610 S.E.2d 494, 500 (2005). In criminal cases, the appellate court is bound by factual findings of the trial court unless an abuse of discretion is shown. *State v. Blackwell-Selim*, 392 S.C. 1,3, 707 S.E.2d 426, 427 (2011). Trial court's decision will not be disturbed on appeal absent a clear showing of an abuse of discretion. *Mitchell Supply Co. v. Gaffney,* 297 S.C. 160, 162-163, 375 S.E.2d 321, 322-23 (Ct. App. 1988). An abuse of discretion occurs when the trial court's order is controlled by an error of law or when there is no evidentiary support for the trial court's factual conclusions. *Stokes – Craven Holding Corp. v. Robinson,* 416 S.C. 517, 536, 787 S.E.2d 485, 495 (2016).

Discussion

During the trial, Ms. Melissa Patton from Axcess Homecare testified. The co-defendants went to them for a child personal care aid. (R. p. 119 l. 23). Ms. Patton testified that the party responsible, the parents, are the people who pick a child's personal care aid. The co-defendants decided to pick the Appellant. (R. p. 122 l. 4-13). Ms. Patton met with the Appellant, and he was

given a handbook and given test questions. (R. p. 129 l. 14-18). Out of the questions that were asked to the Appellant, he got most of them correct. (R. p. 130 l. 5-6). One question was, "Whose responsibility is it to report suspected abuse of neglect?" The answer was "everyone." (R. 130 l. 20-21) Ms. Patton stated that the Appellant completed his training in 2020. (R. p. 132 l. 19-21).

The handbook that was given to the Appellant covered neglect, which was described as, poor hygiene or the smell of feces, appears excessively tired, unattended medical or dental problems such as infected sores or badly decayed teeth. (R. p. 136 l. 9-18). Every year the Appellant was required to complete ten hours of additional education. (R. p. 132 l. 25- p. 133 l.1).

Ms. Patton stated that caregivers were authorized to feed or take a patient out of bed even if it was not directed by the parent. If the parents were not allowed to go into the patient's bedroom, that aid was still allowed to go. If there was an insistence from the parents or responsible party that the aid not go into the patient's bedroom, it was the aids' responsibility to call his supervising nurse or the office. (R. p. 170 l. 4-7). The handbook given to the Appellant states to call them with any concerns. They were told multiple times by Axcess to reach out to them. (R. p. 171 l. 15-16). Ms. Patton also testified that the Appellant worked for twenty-eight hours per week, sixty-eight hours per month. (R. p. 138 l. 16-24).

Administrator at Axcess, Ms. Alicia Dunnaway, also testified. Ms. Dunnaway testified that the Appellant's net pay up until 2022 was about twenty thousand seven hundred eighty-eight dollars and fifty-two cents. ($20, 788.52). The Appellant was also paid 4, 801.36 for 2022. (R. p. 239 l. 25-p. 240 l. 1-3). So the total amount the Appellant made from Axcess was twenty-five thousand five hundred eighty-nine dollars and eighty-eight cents. ($25, 589.88). The Appellant received his last paycheck on April 22, 2022. (R. p. 240 l. 16-20).

The Respondent submits that there was sufficient evidence presented that the Appellant had a total disregard for human life, which is considered implied malice. The State provided sufficient evidence to prove this disregard for the life of the victim was considered murder.

In *State v. Mouzon,* the South Carolina Supreme Court defined malice as an essential element for murder. In *Mouzon,* the Supreme Court decided,

> Although it may be fairly assumed there was no actual intent to kill or injure another, there is evidence of such recklessness and wantonness as to indicate a depravity of mind and disregard of human life, from which a jury could infer malice.

State v. Mouzon, 231 S.C. 655, 662, 99 S.E.2d 672, 675-76 (1957).

It was clear from the evidence that the Appellant lived in the same house as his co-defendants. Each had the identical total disregard for the human life of the victim. Anyone of them could have cared for the victim when she was sick or called 911 so she could have been taken to the emergency room. However, each one of them, including the Appellant, allowed this child to lie in her feces and urine for at least two months, knowing that she could not properly take care of herself due to her physical ailments. As the South Carolina Supreme Court defined malice in *State v. Heyward,*

> "It is a wicked condition of the heart. It is a wicked purpose. It is a performed purpose to do a wrongful act, without sufficient legal provocation; and in this case it would be an indication to do a wrongful act which resulted in death of this man without sufficient legal provocation or just excuse or legal excuse. In its proper sense the term "malice" conveys the meaning of hatred, ill-will or hostility toward another. In its legal sense, however, as it is employed in the description of murder, it does not of necessity import ill-will toward the individual injured, but signifies rather a general malignant recklessness of the lives and safety of others, or a condition of the mind which shows a heart regardless of social duty and fatally bent on mischief; in other words, a malicious killing is where the act is done without legal justification, excuse, or extenuation, and malice has been frequently, substantially so defined as consisting of the intentional doing of a wrongful act toward another without legal justification or excuse."

State v. Heyward, 197 S.C. 371, 15 S.E.2d 669, 671 (1941), *quoting, State v. Gallman,* 79 S.C. 229, 60 S.E. 682, 686 (1908).

In this case, it is clear that the malicious act was not an action but *inaction*. They allowed that child to lie in her feces and urine to the point that her skin was melting off her body, she had sores, roach and other insect bites, and a urinary tract infection so severe that the infection went to her lungs causing pneumonia. The sores on her body and the lack of skin caused infection that caused sepsis. Any of these ailments could have been easily avoided if proper hygiene had been administered to the victim. The Appellant knew the victim did not have the physical capabilities to perform these tasks herself. The Appellant could have called 911 or Axcess as he was trained to do once these ailments presented themselves in order to have a doctor administer the proper medication and care to cure the victim of these curable ailments prior to them causing her death.

This family was getting paid by Axcess Home Care for supposedly allowing the Appellant to administer care to the victim. It is obvious from the lack of care and attention administered to this victim, that they were just collecting this money without doing the job. To them, this victim was just a means of making money and nothing else. The Appellant was trained in how to take care of an incapacitated person. He went through training, took tests, was informed that it was his responsibility to report any suspected abuse of neglect and he failed to do so. The Appellant filled out timecards stating that he spent as much as eleven and a half hours with the victim. (R. p. 142 l. 14-17). The Appellant lived in the same house and if the officers could smell the urine and feces coming out of the room, so could the Appellant. However, he failed to do anything. This lack of action was a total disregard for the life of the victim. This inaction should also be considered unlawful conduct toward a child since he was being paid for the care of the child, yet she was being neglected by the co-defendants and the Appellant.

The Appellant argues that he should have been granted a directed verdict due to the fact he was a mere aid under the direction of his parents. He says he did not have the capacity to meet the

medical needs of the victim because of the highly specialized medical care of the feeding and tracheostomy tubes. The Respondent argues that this is irrelevant due to the fact these tubes did not lead to the death of the victim. Dr. Kelly Rose, the medical examiner, who performed the autopsy, testified that the victim died from sepsis. Dr. Rose testified that the victim had a horrific case of pneumonia, caused by a urinary tract infection which was caused by her lying in her urine and feces for over two months. This urinary tract infection was so severe that it got into her bloodstream, settled into her lungs, causing pneumonia. (R. p. 203 l. 14-21). In her opinion the open wounds on her body from lying in her feces and urine for this long period of time also caused sepsis. (R. p. 208 l. 10-13). Dr. Rose believes that the victim died from sepsis, but she also had pneumonia. (R. p. 219 l. 13-14). This reveals that the lack of the Appellant's knowledge on the feeding and tracheostomy tubes had nothing to do with her death. It was his lack of action in allowing that child, his sister, to lie in her urine and feces for at least two months. The sepsis from infections that came from either a urinary tract infection or the open sores both caused by her lying in her urine and feces is what led to her death. This was sufficient evidence proving beyond a reasonable doubt that the Appellant had a total disregard for the human life of the victim which could be considered murder. As long as there is an existence of evidence the trial judge is obligated to allow the jury to make the decision regarding innocence or guilt.

The Appellant was also denied a directed verdict for the offense of unlawful conduct toward a child. Section 63-5-70 of the South Carolina Code of Laws states:

> (A) It is unlawful for a person who has charge or custody of a child or who is the parent or guardian of a child, or who is responsible for the welfare of a child as defined in 63-7-20[1] to:

[1] Person responsible for a child's welfare includes the child's parent, guardian, foster parent, an operator, employee, or caregiver as defined by 63-13-20, or a public or private residential home, institution, agency, or childcare facility or an adult who has assumed the role of or responsibility of a parent or guardian for the child. S.C. Code Ann. §63-7-20(19).

(1) place the child at unreasonable risk or harm affecting the child's life, physical or mental health or safety;

(2) do or cause to be done unlawfully or maliciously any bodily harm to the child so that the life or health of the child is endangered or life to be endangered.

S.C. Code Ann. §63-5-70(A)(1-2).

The Appellant in accepting payment from Axcess took on the responsibility of being a caregiver through that agency. Therefore, he was responsible for reporting any neglect or abuse that was going on with the victim. He failed to do so, this is evidence proving that he is guilty of unlawful conduct towards a child.

The evidence presented revealed a terrible lack of care by the Appellant that led to the death of the victim. Whether this was a willful act of murder and/or unlawful conduct towards a child must be determined by the jury and not the court. The State argued that these actions were a willful disregard of a human life which is implied malice, considered murder pursuant to South Carolina law. The willful inaction of the Appellant to care for the victim, and not to report this abuse to Axcess, or call 911 for emergency services to transport the victim to the hospital, is what also led to her death. The Appellant is just as guilty as each of his co-defendants.

The ruling by the trial judge was correct. In a directed verdict motion the court cannot be concerned with the weight of evidence, they only must be concerned with its existence. The South Carolina rules of Criminal Procedure specifically state:

> On motion of the defendant or on its own motion, the court shall direct a verdict in the defendant's favor on any offense charged in the indictment after the evidence on either side is closed, if there is a failure of competent evidence tending to prove the charge in the indictment. In ruling on the motion, the trial judge shall consider only the existence or non-existence of the evidence and not its weight.

Rule 19, SCRCrimP.

If evidence of guilt exists, whether it is direct or circumstantial and that evidence is properly presented and allowed into evidence by the trial court, the determination of the jury as to innocence

or guilt should not be taken away. The trial court made the correct decision in denying Appellant a directed verdict on this matter since there was sufficient evidence for the jury to make the final determination.

The trial judge is not responsible for making a decision as to the weight of evidence that was presented, the jury is to judge the questions of fact, not the court. So, the decision of the trial judge in denying Appellant his motion for a directed verdict was not done in error. This decision should be upheld.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court should be affirmed.

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General
S.C. Bar No. 14244

TOMMY EVANS, JR.
Assistant Attorney General
S.C. Bar No. 65282

BARRY BARNETTE
Seventh Circuit Solicitor

By: *s/ Tommy Evans, Jr.*
Tommy Evans, Jr.
Assistant Attorney General

Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211-1549
Telephone No. (803) 734-6305
ATTORNEYS FOR RESPONDENT

March 27, 2026,
Columbia, South Carolina