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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Jennifer B. McCoy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHRISTOPHER ROBERT WHITE,

APPELLANT

APPELLATE CASE NO. 2025-001671

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in failing to direct a verdict of acquittal where the state did not present any direct or substantial circumstantial evidence of each element of criminal sexual conduct with a minor in the third degree?

STATEMENT OF THE CASE

In November of 2024, a Charleston County grand jury indicted Appellant for criminal sexual conduct with a minor second degree and criminal sexual conduct with a minor third degree. R. 523-24. The state, represented by Lauren M. Frierson and Tyra S. Roberts, called the case to trial on August 4, 2025, before the Honorable Jennifer B. McCoy and a jury. Appellant was represented by Cameron Blazer. R. 1.

After a three-day trial, Appellant was acquitted of the criminal sexual conduct with a minor in the second degree. Appellant was found guilty of criminal sexual conduct with a minor in the third degree. R. 485-86. Appellant was sentenced to fifteen years' imprisonment, suspended to ten years of active time followed by five years of probation. R. 498.

This appeal follows.

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 a verdict of acquittal where the state did not present any direct or substantial circumstantial evidence of each element of criminal sexual conduct with a minor in the third degree.

Relevant Facts

Appellant and Isabelle Noy-McCall married in 2013. Noy-McCall had a young daughter, Minor. The couple adopted a second child, Brother, a few years into their marriage. The couple separated in August of 2019. R. 180-181. Minor was twelve at the beginning of 2019. R. 111. During the separation, Minor lived with her mother and would visit Appellant every other weekend when Brother was in Appellant's custody. R. 183. Minor stated that when she stayed at Appellant's home, she was allowed to stay up late and to watch movies that her mother would not have let her watch. She stated the movies were not "bad" but included sexual innuendo or intimate scenes that her mother had deemed improper. R. 114. She was able to recall that one movie she watched was Adam Sandler's "Click". R. 142. The weekend visits continued until Minor and Appellant had an argument over Minor wanting to spend time with her friends after Appellant had made plans for the day. Minor called Noy-McCall to attempt to sway the argument in her favor, at which point Appellant stated it would probably be best if Minor did not continue coming to his home for visitation. R. 136-137; 361-364.

In October of 2020, Minor's school guidance counselor noticed Minor was upset during recess and asked her if she wanted to talk. Minor agreed, and it was during that conversation that Minor disclosed the alleged abuse to an adult. R. 124-125. Minor had previously disclosed the alleged abuse to Sam G., a friend in her middle school class, who told her to tell an adult. R. 123-124. After learning of the accusations, Noy-McCall confronted Appellant over text

message[1]. The state characterized the text messages as apologetic, with Appellant "all but admit[ing] to what he did." R. 98; 500-504.

At trial, Minor alleged that while she was watching a movie with Appellant on the living room couch, he got up to get Twizzlers, then returned to the couch, and began putting "his hands under my clothes and touching my breasts and under my pants and stuff like that and -- yeah." R. 116-117. She also recalled a time she had gotten in Appellant's bed because she had been scared during a storm, and he was "trying to put his hands under my underwear, and I would kind of pull away. And then he just started touching me on my vagina." R. 119. Appellant purportedly did not speak during the improper touching and would "just stop on his own." R. 117-118. Minor alleged that Appellant touched both inside and outside of her vagina and that the touching happened on more than one occasion. R. 117.

Additionally, the state presented the testimony of Sam G. who confirmed Minor texted him about the sexual misconduct, school resource officer Paula Wilson, the first law enforcement officer that Minor disclosed to, Katherine Fabrizio, a sexual assault nurse examiner (SANE) who performed an exam on Minor which was found to be normal, Carole Swiecicki, a blind expert in child sexual abuse dynamics, and Taylor Austin, the lead investigator on the case. R. 152; 168; 229; 264; 287. Austin testified that she neither spoke with Minor nor did she take any

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1 The admission, authenticity, and completeness of the text messages was contested at trial. R. 72-80. Over objection, the state introduced a series of screenshots of text messages that Noy-McCall emailed to Investigator Austin. R. 194. Austin never obtained Noy-McCall's phone to determine if the text messages were authentic or complete. R. 239. When Appellant took the stand, Counsel Blazer moved to enter a more complete chain of text messages that she had discovered she possessed that very morning. The state objected, arguing that Counsel Blazer had not turned over the text messages under reciprocal Rule 5. The court admitted the text messages that completed the conversation between Noy-McCall and Appellant surrounding Minor's initial accusation under the Rule of Completeness. At the agreement of Counsel Blazer, the Court redacted other portions of the text messages, including the portion wherein Appellant responded, "This is lies and [Minor] needs to confess." R. 378-393; 500-504; 505-511; 512-515.

other investigative actions. R. 231-240. She admitted the warrant for Appellant's arrest was based solely on Minor's disclosure and the text message exchange between Noy-McCoy and Appellant. R. 241

After the state rested, Counsel Blazer moved for a directed verdict. She argued that there was insufficient evidence regarding the elements of the charges. She argued the testimony around penetration was unclear, that best practices were not followed in the case, and that the investigator did nothing in terms of actually investigating the case. She continued:

> I am certainly aware of the existence of the law in South Carolina that does not require corroboration of a statement for a case to be brought forward. But I would argue, notwithstanding that law, that that law places an undue additional burden on people accused of these kinds of cases that is not applicable to any other crime. There is a minimal level of proof required in every case, and it should -- and the fact that the State has said that in these kinds of cases corroboration is simply unnecessary essentially ties my hands in these arguments. But I don't think that it should. I think it's an unconstitutional limitation. But that is an argument to be made to a higher court, and I recognize that.

R. 341-342.

The court ruled that the victim testified that there was touching inside and outside of her vagina, and that was enough to survive the directed verdict motion. The court acknowledged that "there may be some voids in evidence or voids in the investigation, but that, of course, would go just to weight, which is a question for the jury." R. 345.

Appellant then testified in his own defense. Appellant denied he ever touched Minor in an improper or sexually explicit way. R. 353. He explained that he learned of the accusations when an employee of the Department of Social Services (DSS) came to his house the evening that Minor disclosed. She showed him her DSS credentials, informed him that Minor had made sexual assault allegations, and spoke with Brother. Appellant told the DSS agent that he would

"never do anything like that" to Minor. Brother was removed from Appellant's custody that night and returned to Noy-McCall's care. R. 366-368.

Appellant explained that he received the text messages within an hour of DSS taking Brother, and he was still very confused and uninformed when Noy-McCall was texting him. While the DSS agent had given him some information, it was very vague. His goal with the initial text messages was to attempt to defuse the situation. R. 369-371. In the completed text messages that were entered during his testimony, Appellant repeatedly denied molesting Minor. R. 394-399. He admitted to tickling her or rubbing her back, as his mother had done for him as a child, but maintained he did not touch his stepdaughter in a sexual way. R. 399-400; 413.

Counsel renewed the direct verdict motion after resting the defense case and it was again denied. R. 433.

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).

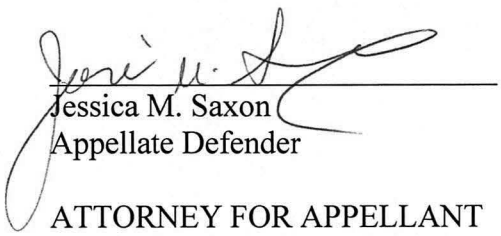
To prove an individual guilty of CSCM third degree, the state is required to present direct or substantial circumstantial evidence that 1) the defendant is over fourteen years old and the victim is under sixteen years old at the time of the offense, 2) that the defendant's actions were both willful and lewd, 3) that the defendant attempted to or did commit a lewd or lascivious act upon the body or its parts of a child and 4) the defendant's intent was to arouse, appeal to, or gratify the lust, passions, or sexual desires of the defendant or the child. S.C. Code Ann. § 16-3-655(C).

The trial court erred in failing to direct a verdict of acquittal to CSCM third degree where the state failed to produce direct evidence or substantial circumstantial evidence that Appellant's actions were willful and lewd or lascivious and that he had the specific intent to arouse, appeal to, or gratify the lust, passions, or sexual desires of himself or Minor. While a victim's testimony can be sufficient to send the case to the jury, the testimony must establish all elements of the offense. See State v. Dinkins, 435 S.C. 541, 868 S.E.2d 181 (2021); State v. Burroughs, 328 S.C. 489 (1997). Here, the testimony of Minor neither established that the touching was lewd or lascivious nor did it establish Appellant's intent. Minor testified that Appellant never said anything during the encounters, thus she had no ability to testify to his intent. More importantly, the text messages entered by the state evinced that Appellant had *no* intention of sexually abusing Minor. That was further born out through Appellant's testimony which was the only direct evidence of intent. He maintained that he only ever tickled or massaged Minor's

back in a non-sexual manner. The state wholly failed to produce evidence that the tickling and massaging was done in a lewd and lascivious manner specifically to arouse, appeal to, or gratify the lust, passions, or sexual desires of Appellant or Minor. The trial court erred in failing to grant a directed verdict in this matter.

CONCLUSION

Based on the foregoing arguments, this court should reverse the lower court and enter a directed verdict of acquittal.



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of April, 2026.

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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;
(2) Entire Trial Transcript;
(3) State's Exhibits 3-7; Defense Exhibit 1; Court's Exhibit 3;
(4) Motion to Renew All Objections and for a New Trial;
(5) Motion to Reconsider Sentence;
(6) Orders Denying Defendant's Post-Trial Motions.

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

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ATTORNEY FOR APPELLANT

This 20th day of April, 2026.

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 Christopher Robert White, #398284, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 120th day of April, 2026.

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