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Jul 09 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Oconee County

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

VIRGINIA LEA DRIVER,

APPELLANT

APPELLATE CASE NO. 2025-002178

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred in refusing to direct a verdict of acquittal where Complainant violated the terms of his bond, and where Appellant, his bail bonding agent, had the authority to arrest him, since the State failed to prove Appellant acted “without authority of law,” a material element of kidnapping?

STATEMENT OF THE CASE

During the May term of 2023, an Oconee County Grand Jury indicted Virginia Driver, Appellant, for kidnapping. R. *(indictment, both pages). Appellant was tried before the Honorable R. Scott Sprouse and a jury, from October 13 – 14, 2026. Tr. 1. Appellant was represented by Lee Cole. Corey Jones prosecuted the case. Tr. 2. Appellant was convicted as indicted. Tr. 204, ll. 17-25. She was sentenced to ten years' imprisonment suspended upon ten days' time served and five years of probation. Tr. 211, ll. 14-20.

This appeal follows.

STANDARD OF REVIEW

“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 776-77. “On appeal of the denial of a directed verdict of acquittal, this Court must look at the evidence in the light most favorable to the state.” *Id.* at 139, 708 S.E.2d at 777; *see also State v. Hepburn*, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013). 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. *Hepburn*, 406 S.C. at 429, 753 S.E.2d at 409.

ARGUMENT

The court erred in refusing to direct a verdict of acquittal where Complainant violated the terms of his bond, and where Appellant, his bail bonding agent, had the authority to arrest him, since the State failed to prove Appellant acted “without authority of law,” a material element of kidnapping.

Relevant facts

Appellant had a bail bonding company, Tribal Bail Bonding. She was a bail bond agent and was licensed by the State of South Carolina. Tr. 54, ll. 18-22; Tr. 56, l. 20 – 57, l. 14; Tr. 88, ll. 2-14; Tr. 114, ll. 2-10. Although Appellant had an office in Walhalla, she also had a home office in Fair Play, at the address reflected on her surety bondsman license. State’s Exhibit #1; Tr. 125, ll. 4-7; R. *(Defense Exhibit #1, all pages). Jeremy Parks (Complainant) was her client; Appellant had posted his bond on two sets of charges, including larcenies and burglaries, at separate times in 2021. Tr. 56, l. 22 – 58, l. 22; Tr. 71, ll. 1-19; Tr. 116, l. 17 – 117, l. 24.

Complainant admitted that while on bond he was using drugs and did not have a working phone. Tr. 72, ll. 13-20; Tr. 73, ll. 3-5. The terms of Complainant’s bond contract with Appellant required his contact information and required him to check in “weekly” with “NO EXCEPTIONS.” R. *(Defense Exhibit #3 at p. 2). The bond contract had been in place for approximately five months. R. *(Defense Exhibit #3 at p. 3). Complainant had only checked in with the bonding company a “couple of times.” Tr. 61, ll. 1-10. “I didn’t have a ride. I didn’t have a license. I didn’t have a phone. If you need me, you are going to have to come get me and I’ll do whatever I have to do. And then the next thing that I know they are showing up, you know, full swat gear putting handcuffs on me.” Tr. 61, ll. 8-12. Complainant calling a “couple” of times when he was required to call weekly for five months did not comply with the bond

terms. Complainant claimed he had notified Appellant that he moved; Appellant stated it was Complainant's ex-girlfriend or ex-wife who contacted her to notify her of this development after it had already occurred. Tr. 60, ll. 21-25; Tr. 122, ll. 10-19.

In late March of 2022, Complainant reported to the Oconee County Sheriff's Department that Appellant had arrested him at his new place at gunpoint on March 4, 2022, and handcuffed him. Tr. 62, ll. 9-20; Tr. 79, l. 15 – 80, l. 4. Complainant alleged Appellant had taken him to her house and held him there overnight before releasing him. Tr. 62, l. 12 – 67, l. 5. According to Complainant, as they were pulling out of his driveway, he told Complainant he could get her the money he still owed her for the bond, as he was getting a loan (which turned out to be a "scam"). Tr. 62, l. 17 – 63, l. 3. Although Complainant claimed he did not feel like he could leave while at Appellant's house, he admitted the handcuffs had been removed and he admitted he went out and smoked a joint with an acquaintance on Appellant's porch. Tr. 64, l. 18 – 67, l. 4. Complainant claimed when Appellant took him home in the morning, she had him call the loan company and put the call on speaker when they reached his house. Tr. 67, l. 8 – 68, l. 3.

Appellant was interviewed by Officer Hellams, and she told him she picked up Complainant because he had not been checking in with her, which was a requirement of their bond agreement. Tr. 84, l. 12 – 85, l. 16; State's Exhibit #1; Tr. 89, l. 23 – 90, l. 3. Appellant admitted she took Complainant to her home office to do paperwork but decided to release him when he promised to do better. Tr. 90, l. 17 – 91, l. 12; State's Exhibit #1. During Hellams's testimony, section 38-53-50 and section 38-53-60 were brought up. Tr. 91, l. 19 – 98, l. 14. These statutes discuss a surety's ability to arrest a defendant for purposes of surrendering him, and to take him to a detention facility when the surety desires to be relieved on a bond. Hellams

claimed taking Complainant to Appellant's home was beyond Appellant's arresting authority. Tr. 87, l. 15 – 88, l. 1.

Defense counsel moved for a directed verdict, arguing the State had not proven the elements of kidnapping as Appellant had the "lawful authority" to arrest Complainant. The defense argued there was no requirement the bondsman proceed directly to the jail, and nothing prevented the possibility of a settlement being reached prior to surrender. Defense counsel cited the common law and rule of lenity as to the statutes about which Hellams testified. Tr. 100, l. 2 – 104, l. 6; Tr. 106, ll. 3-23. The judge noted this was a "novel issue" but denied the motion, citing the reference in section 38-53-50 to a "detention facility." Tr. 106, l. 24 – 108, l. 12.

Appellant testified Complainant did not call to check in for months, did not update his address or phone number, and did not respond to calls from her office. Tr. 122, l. 10 – 123, l. 10. Appellant stated Complainant was cuffed only while in her vehicle, which was for safety because he was on drugs. Tr. 124, l. 3 – 125, l. 3; Tr. 128, ll. 16-21; Tr. 137, l. 25 – 138, l. 6. She explained she took him to her home office to get some paperwork for the jail as the jail would not accept him without it, but she changed her mind about surrendering Appellant when he begged for another chance. Tr. 125, l. 15 – 126, l. 23. Appellant told Complainant he was free to go, but he stayed there overnight because he had no ride. Tr. 126, l. 22 – 130, l. 10. Appellant denied that she ever pulled a gun on Complainant and stated she took him home when he woke up. Tr. 129, l. 21 – 130, l. 4; Tr. 124, ll. 15-17. Appellant testified she thought she had the authority to arrest Appellant and take him to her home office to finish the paperwork. Tr. 131, ll. 8-24. Appellant denied that this was about money, and she denied that she listened to a phone call about a loan. State's Exhibit #1; Tr. 127, ll. 3-16.

Appellant's husband testified he saw Complainant that night after Complainant and Appellant were done in the home office, and Complainant asked if he could spend the night and did so. Tr. 147, l. 23 – 151, l. 4; Tr. 154, ll. 8-19.

The defense subsequently renewed its directed verdict motion, which was again denied. Tr. 158, l. 4 – 159, l. 25. The jury deliberated for two and a half hours and asked a number of questions. Tr. 194, l. 14 – 204, l. 6. One of the questions was whether a bondsman could legally detain someone and then change their mind and release. The court told the jury that was a question of fact for it to decide based on the two statutes. Tr. 197, l. 6 – 200, l. 8. Ultimately, Appellant was convicted as indicted. Tr. 204, ll. 17-21.

Discussion

Evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt.” *State v. Bostick*, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011). An accused “is entitled to a directed verdict when the State fails to present evidence on a material element of the offense charged.” *State v. Brown*, 360 S.C. 581, 586, 602 S.E.2d 392, 395 (2004) (citations omitted). *See State v. Hepburn*, 406 S.C. 416, 429, 753 S.E.2d 402, 408 (2013) (same). “[W]hen there is an absence of evidence, it becomes the duty of the trial judge to direct a verdict.” *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000). *See also* Rule 19, SCRCrimP (“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.”).

Denial of a directed verdict motion is only proper where viewing the evidence in the light most favorable to the State, the evidence could induce a reasonable juror to find the defendant guilty. *State v. Pearson*, 415 S.C. 463, 474, 783 S.E.2d 802, 808 (2016). The trial court should grant the motion for a directed verdict “where the evidence merely raises a suspicion that the accused is guilty.” *State v. Mitchell*, 341 S.C. at 409, 535 S.E.2d at 127.

“Without authority of law” was a material element of kidnapping. Appellant was entitled to a directed verdict of acquittal as the State did not prove this element. At the time of the alleged offense, S.C. Code Ann. § 16-3-910 (2015) provided, “Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever *without authority of law* . . . is guilty of a felony[.]” (emphasis added). *See State v. Owens*, 291 S.C. 116, 118, 352 S.E.2d 474, 475 (1987) (“The crime of kidnapping requires proof that the defendant: (1) unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted or carried away; (2) any other person; (3) by any means whatsoever; (4) without authority of law. S.C. Code Ann. § 16-3-910 (1985).”).

Appellant had authority of law to arrest Complainant. “When a defendant is released on bail, he is in the constructive custody of the bondsman. The bondsman always has the authority to physically remand the defendant to the custody of the jurisdiction holding the bond and relieve himself from the obligation under the bond.” *State v. Boatwright*, 310 S.C. 281, 285–86, 423 S.E.2d 139, 142 (1992) (Toal, J., dissenting). *See Taylor v. Taintor*, 83 U.S. 366, 371 (1872) (“When bail is given, the principal is regarded as delivered to the custody of his sureties. Their dominion is a continuance of the original imprisonment. Whenever they choose to do so, they may seize him and deliver him up in their discharge; and *if that cannot be done at once, they may imprison him until it can be done.*”) (emphasis added).

Section 38-53-60 provides, “For the purpose of surrendering the defendant, *the surety may arrest him* before the forfeiture of the undertaking or, by his written authority endorsed on a certified copy of the undertaking, may request any judicial officer to order the arrest of the defendant by the surety.” S.C. Code Ann. § 38-53-60 (West, Westlaw through 2026 Act No. 206) (emphasis added). Section 38-53-50(B) provides, “If the circumstances warrant immediate incarceration of the defendant to prevent imminent violation of one of the specific terms of the bail bond, or if the defendant has violated one of the specific terms of the bond, the surety *may* take the defendant to the appropriate detention facility for holding until the court orders that the surety be relieved.” S.C. Code Ann. § 38-53-50(B) (West, Westlaw through 2026 Act No. 206) (emphasis added). Section 38-53-50(B) provides the bondsman “may” take the defendant to the detention center; it does not provide the bondsman “must” or “shall.” Similarly, section 38-53-60 provides the bondsman “may arrest him” for the purpose of surrender. This statutory scheme does not prohibit the bondsman, post-arrest but pre-surrender, from entering into an agreement with the defendant and deciding to release him and remain on the bond.

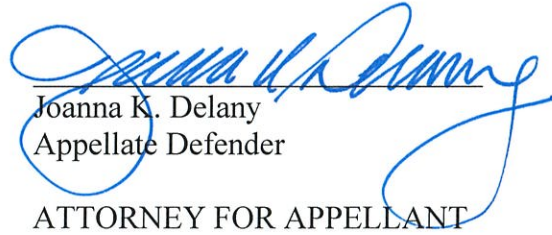
Additionally, the contract between the parties provided that Complainant must report to the bail bondsman’s office weekly, either in person or by telephone, with no exceptions, and must provide his address and telephone number. R. *(Defense Exhibit #3 at p. 2). Complainant admitted he was in violation of the terms of his contract with Appellant—he stated he called only a “couple of times” to check in. However, the contract, which was signed in October of 2021 (this incident was in March of 2022), required him to check in “weekly” with “NO EXCEPTIONS.” Complainant was in violation of the specific terms of his bond and Appellant was thus permitted to arrest him pursuant to S.C. Code Ann. § 38-53-50(B).

Common law permitted Appellant, the bonding agent, to arrest Complainant and detain him “until” she could “deliver him up,” i.e., until she could go back to her home office and retrieve the paperwork for the surrender. *Taylor v. Taintor*, 83 U.S. at 371. To the extent common law was supplemented by statute, the statutory scheme did not prohibit her conduct, and if any ambiguity existed therein, as defense counsel correctly argued, the rule of lenity would apply. See *Berry v. State*, 381 S.C. 630, 633, 675 S.E.2d 425, 426 (2009) (“in construing a criminal statute, we are guided by the rule of lenity—the principle that any ambiguity must be resolved in favor of the accused”); *Planned Parenthood S. Atl. v. State*, 445 S.C. 600, 627, 916 S.E.2d 299, 313 (2025) (rule of lenity applied “when a party is facing civil or criminal punishment under an ambiguous statute”). Appellant submits that “may” is not ambiguous and permitted her to take Complainant to her home office and subsequently decide to release him and remain on the bond instead of surrendering him. See *State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) (“The Court should give words their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation.”) (cleaned up). However, if the statutes are ambiguous, the rule of lenity requires the ambiguities to be resolved in favor of Appellant, the accused.

Appellant was permitted to arrest Complainant, and nothing prohibited her from changing her mind and releasing him without surrender. Thus, she was not “without authority of law” under section 16-3-910. There was no evidence Appellant acted “without authority of law,” which was a “material element” of the offense. *State v. Brown*, 360 S.C. at 586, 602 S.E.2d at 395. The court was required to direct a verdict given the absence of evidence. *State v. Mitchell*, 341 S.C. at 409, 535 S.E.2d at 127.

CONCLUSION

Appellant respectfully requests this Court reverse her conviction and sentence and remand for entry of a directed verdict of acquittal.


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ATTORNEY FOR APPELLANT

This 9th day of July, 2026.