

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEAL

Appeal from Colleton County

Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT

v

HALDEN LAMONT HOLLMAN

APPELLANT

APPELLATE CASE NO. 2013-000477

PRO SE BRIEF OF APPELLANT

HALDEN LAMONT HOLLMAN  
Appellate

Broad River Correctional Institution  
4460 Broad River Road  
Columbia SC 29210

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SC Court of Appeals

TABLE OF CONTENTS

Table of Contents ..... 1

Table of Authorities ..... 2

Statement of Issue on Appeal ..... 3

Statement of the case ..... 4

ARGUMENT ..... 5

Conclusion ..... 12

## TABLE OF AUTHORITIES

### Cases

In re Winship, 397 U.S. 358, 90 S.Ct. 1068 (1970)..... 8

State v. Brown, 360 S.C. 581, 602 S.E.2d 392 (2004)..... 8

State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011)..... 9

State v. Buckmon, 347 S.C. 316, 555 S.E.2d 402 (2001)..... 9

State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001)..... 9

State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011)..... 9

State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000)..... 10

### Statutes

S.C. Code Ann. § 16-11-311(A)(3)..... 8

## STATEMENT OF ISSUE ON APPEAL

Did the trial court err in failing to direct a verdict of not guilty of first degree burglary committed on August 8, 2012 where the only evidence relating to when the victim's television and computer were stolen was his testimony that he woke up at 5:00 Am in the morning and he didn't see his property in the den?

## STATEMENT OF THE CASE

On October 18, 2012, the Colleton County Grand Jury indicted Appellant Halden Hollman on a charge of first degree burglary. R. 198- R. 199. On February 25, 2013, Appellant proceeded to trial before the Honorable Perry M Buckner, III and a jury. Tr. 1. Harris S. Beach represented Appellant and Steve Knight represented the state.

On February 26, 2013, the jury found Appellant guilty as charge. Tr. 186, 1:25- Tr. 187, 1:5. The trial court sentenced Appellant to twenty-five years imprisonment. Tr. 196, 11:5-11

## ARGUMENT

THE TRIAL COURT ERRED IN FAILING TO DIRECT A VERDICT OF NOT GUILTY BECAUSE THERE WAS NO DIRECT EVIDENCE AND THERE WAS NO ELEMENTS THAT A FIRST DEGREE BURGLARY HAS BEEN COMMITTED. THE ONLY EVIDENCE THE STATE HAS IS TANNER'S TESTIMONY THAT THE TELEVISION WAS GONE WHEN HE GOT UP AT 5:00AM.

## STATEMENT OF FACT

The state alleged that at some point in time of August 8, 2012 and the following morning Appellant went into a residence and stole a 55 to 60 inch television, Apple Laptop and a cellular phone. Tr. 65, 1.20 - Tr. 67, 1.15. Mr. Billy Tanner a resident of Walterboro, testified that he went to bed around 10pm on the day in question not knowing if these items were missing or not. The following morning he got up around 5:00am. Upon entering the living room he saw his television missing along with other items. Tr. 70, 1.12 - Tr. 73, 1.11. Mr. Tanner also testified that someone went through his vehicles outside the house and a house key was in one of the vehicles appeared to have been dropped on the steps to the backdoor. Tr. 75, 1.16 - Tr. 76, 1.7. Now on August 9, 2012 Brandon Craven with Walterboro Police Department responded to the scene and dusted for fingerprints and lifted one it was sent to North Charleston P.D. Criminal Identification Division,

The results were insufficient for identification. Tr. 77, 1.24-  
Tr. 78, 1.4.

The state produced as a witness Lt. Jason Chapman from the Colleton County Sheriff office. He stated that he interview Appellant at the Walterboro Public Safety office on September 4, 2012. Tr. 79, 1.2-  
Tr. 87, 1.21. The Appellant denied any and all involvement in the theft, then Chapman Led the Appellant to believe that he already had alot of evidence connecting him which he didn't. Then Chapman said Appellant then told him he entered the resident through the side door and took a T.V., labtop and a touch screen telephone Tr. 85, 1.12-  
Tr. 86, 1.5.

Appellant called his girlfriend to testify that law enforcement had also filed charges against her for receiving stolens goods in connection with the theft. She was incarcerated for a few days and nights, and her sister had to look after her four children until she was released and the charges was eventually dropped. Tr. 150  
1.15- Tr. 1.4. Appellant took the witness stand and tried to explain that he had been dishonest during the interrogation because of the fear of the state taking his kids due to their incarceration and the seriousness of the alleged offense.

Other than the Appellant's statement to Chapman, the State could not produce any direct evidence linking him to the crime. The police never found in the Appellant possession any of the items stolen and they were never recovered. Tr. 90, 11.2-24. The state did call a witness to testify Appellant sold him a computer but was never identified as the one Mr. Tanner owned in early August 2012. Tr. 100, 1.21 - Tr. 101, 1.25. Both parties stipulated that the investigators lifted a fingerprint from Tanner's home, but it was insufficient for identification. Tr. 77, 1.12 - Tr. 78, 1.18.

After the close of the case, Appellant moved for a direct verdict. Because there was no evidence or any elements that the Appellant done the crime. Unfortunately the court denied the motion, stating that sufficient evidence existed in the records to support the burglary first charge. Even in the opening statement of the State Sol. Knight talked about having to prove the elements of burglary in the first degree which he never proved. Tr. 65, 1.19 - Tr. 66, 1.4.

### Discussion

The trial court erred in failing to direct a verdict

Of not guilty because Tanner never testified to when he last saw his television, and therefore the state's evidence merely raised a suspicion that Appellant stole it during the nighttime. S.C. Code Ann. §16-11-311 (A)(3) defines first degree burglary to include entering a dwelling during the nighttime, without consent, and with intent to commit a crime therein. The accused is entitled to a direct verdict when the State fails to present evidence to support every element of the charged offense. See *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."); see also *State v. Brown*, 360 S.C. 581, 586, 602 S.E.2d 392, 395 (2004). When considering a motion for direct verdict of not guilty "the trial court is concerned with the existence or non-existence of evidence, not its weight." *Brown*, 360 S.C. at 586, 602 S.E.2d at 395.

Our Supreme Court "has repeatedly affirmed the principal 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) (paying a lot of attention to this) In Odems, the 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 the system of law teaches us that the proof required in cases built solely on circumstantial evidence, "and with out any direct evidence and with out any element provin in this case the trial court should grant a direct verdict motion when there is no evidence that the accused is guilty." Odems, 395 S.C. at 586, 720 S.E.2d at 50 (emphasis add) (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) (citing Lollis, 343 S.C. 580, 541 S.E.2d 254). Therefore, a case based solely upon circumstantial evidence should be submitted to the jury only "if there is any substantial circumstantial evidence which reasonably tends to prove the guilt of the accused of from which his guilt may

fairly and logically deduced." Bostick, 392 S.C. at 139, 708 S.E.2d at 776-777 (citing State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)).

In this case, the State failed to prove a lot of things like when on August 8, 2012 that the theft occurred we only know that Tanner wakes up at 5:00 Am every morning and that's when he noticed that the television, computer, and phone was missing. We also know that the State said that they recovered the Apple laptop computer saying it's in the back a couple of times but never produce it or tried to submit it into evidence in the case.

Even considering Appellants statement to the police, the State did not find any direct evidence of time the theft occurred. The State has the burden to prove every element that a crime has been committed and the state has failed to prove by who and when the crime was committed. The state and the witness mention a computer in the back but never brought it forward or never entered it into evidence, they never produce the computer, usage history of which could have established that the Tanners had possession of it, and The State also

stated that was the long and short of this case. The State did not call Tanner or son or his wife to testify directly as to when either last saw the property. In a criminal case, the State has the burden to prove every element of the crime charged beyond a reasonable doubt. In this case the State simply fail to adduce any sufficient evidence to meet the burden of proof. Rather, it cast nothing more than a suspicion on Appellant and the circumstances of the theft from the Tanner's home. Therefore the Appellant was entitled to a direct verdict of not guilty and the trial court erred in denying his motion.

CONCLUSION

For the foregoing reasons, Appellant respectfully request that this Court reverse the decision of the trial judge and issue an order of acquittal.

Respectfully submitted,

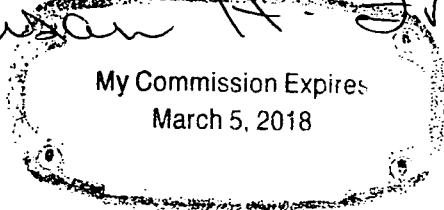
Walden L. Hollman

Appellant

This 19th day of February, 2014.

on the 21st day of February, 2014

Susan H. Drye



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Dear Jenny Kitchings

I applied for an extension on the beginning of January 2014 and u kindly gave me to February 18, 2014. On February 4, 2014 our dorm unit Moultrie at Broad River Correctional Institution got Quarantine due to the flu virus we was not able to go to the Law Library or mail room so i could complete my brief we got off on the afternoon of February 19, 2014. I apologize for running past the extension date due to the rules of SCDC policy's. When the flu like virus is detected they Quarantine the whole dorm and all of privileges were forfeited. Thanks for being so understanding.

Sincerely

Halden L. Hollman

Halden Lamont Hollman #354491  
BRCI Moultrie 1045  
4460 Broad River Rd.  
Columbia SC 29210

on the 24th day of February, 2014  
Halden L. Hollman

My Commission Expires  
March 5, 2018

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