

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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Appeal from Lexington County  
The Honorable George C. James, Jr., Circuit Court Judge

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Unpublished Opinion No. 2014-UP-143 (S.C. Ct. App. filed 4/2/14)  
Appellate Case No. 2012-212428

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**RECEIVED**

APR 28 2014

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

JEFFREY DODD THOMAS,

APPELLANT.

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**RETURN TO PETITION FOR REHEARING**

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On April 2, 2014, this Court affirmed Appellant's conviction for manufacturing methamphetamine, finding Appellant's directed verdict motion was properly denied. Appellant submitted a Petition for Rehearing on April 17, 2014, arguing that this Court overlooked or misapprehended "the lack of evidence presented by the prosecution" and particularly the lack of evidence of an overt act, or the *actus reus* of the offense. To the contrary, this Court properly affirmed the denial of Appellant's directed verdict motion where, taken in the light most favorable to the State, there was sufficient evidence reasonably tending to prove both the *actus reus* and the *mens rea* of the offense of manufacturing methamphetamine.

In his Petition for Rehearing, Appellant contends that this Court's citation to S.C. Code § 44-53-375(D) (indicating that possession of paraphernalia used in the

manufacture of methamphetamine is prima facie evidence of intent to manufacture) indicates that this Court concluded the evidence was sufficient to surpass directed verdict based **solely** upon Petitioner's possession of paraphernalia and the resulting statutory presumption of intent. (See Petition for Rehearing, p. 1-2). To the contrary, the Court's citation to this statute at the end of its opinion did not suggest that the Court's decision to affirm the denial of the directed verdict motion was based solely on the *mens rea* aspect of the crime. In addition to the "intent" statute, this Court cited to several cases standing for the following propositions: that the trial judge is concerned with the existence of evidence rather than its weight; that the trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis; that the evidence and all reasonable inferences must be viewed in the light most favorable to the State; and that if there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must find the case was properly submitted to the jury. It is clear that this Court found that substantial circumstantial evidence existed as to the entire offense, including both the *actus reus* and the *mens rea*; therefore there was no error.<sup>1</sup>

The State agrees with Appellant that the intent statute, S.C. Code § 44-53-375(D), deals only with the *mens rea* aspect of the crime. (See Petition for Rehearing, p. 11). However, in addition to the statutory presumption of intent, the State presented substantial circumstantial evidence establishing that Appellant actually made

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<sup>1</sup> Nor did the trial judge err by relying solely on the "intent" statute, as Appellant contends. (See Petition for Rehearing, p. 3). In fact, in ruling on the directed verdict motion, the trial judge stated that "[f]rankly I don't know what Subsection D of the statute adds to the equation. . . Someone can have the intent to commit a crime, but the crime is not committed until the crime is actually committed." (R. p. 169, lines 14-20). Later, after discussing jury charges, the trial judge stated that "this intent language, *coupled with the other evidence in the case*, is enough to, to get me past sponsoring an absurd result." (R. p. 172, lines 16-18) (emphasis added).

methamphetamine; i.e., that he committed the *actus reus* of the offense. Specifically, a truck registered to and driven by Appellant contained many of the materials necessary to make methamphetamine using the “shake and bake” method. (R. p. 7-8; p. 57-58; p. 65-70; p. 122-45). Most significantly, Appellant’s truck contained an empty starter fluid can with a hole punched in the bottom. (R. p. 58, lines 10-12). The methamphetamine expert testified that the only reason to punch a hole in the bottom of a starter fluid can is to drain the liquid out for use in the production of methamphetamine. (R. p. 135, lines 3-5; p. 137, lines 3-5; p. 145, lines 1-3). The expert further testified that in his opinion, “especially because of the punched out [starter fluid] can,” the items found in Appellant’s truck were used for the production of methamphetamine. (R. p. 137, lines 1-5; p. 144, lines 16-25). Critically, Appellant’s truck also contained the most telling evidence of all that Appellant had manufactured methamphetamine - the finished product, methamphetamine. (R. p. 98, lines 1-14).

As the solicitor pointed out below, methamphetamine is “not naturally occurring in nature” and “its existence is proof that it was made.” (R. p. 154, lines 15-18). The fact that Appellant possessed the finished product, combined with the fact that he possessed many of the materials and equipment needed to make methamphetamine **and** possessed a starter fluid can that had been previously used in the manufacture of methamphetamine, created a reasonable inference that Appellant manufactured methamphetamine. (See R. p. 154, lines 16-20; p. 184, lines 3-15). Cf. State v. Cooper, 279 S.C. 301, 302, 306 S.E.2d 598, 599 (1983) (a jury can infer that a person found in unexplained possession of recently stolen property was the thief). The fact that Appellant did not possess all of the materials needed to make methamphetamine **in the future** was irrelevant because the

finished product - in conjunction with the drained-out can of starter fluid and the other items found in the truck supporting that Appellant was a manufacturer of methamphetamine - indicated Appellant had **already** manufactured methamphetamine and had disposed of the leftover trash, such as the bottle used to shake the chemicals for the initial chemical conversions. (See R. p. 128-29).

Notably, one of the attractive features of the “shake and bake” method of manufacturing methamphetamine is that a person can make their methamphetamine fairly quickly and with a lower risk of detection. (See R. p. 155, lines 9-10). Because Appellant made his methamphetamine in secret using this abbreviated method, the State was unable to present direct evidence regarding the precise facts surrounding its making. However, the State believes that the evidence it did present, taken in the light most favorable to the State and keeping in mind that a trial judge at the directed verdict stage need not be concerned with whether the evidence infers guilt to the exclusion of any other reasonable hypothesis,<sup>2</sup> constituted substantial circumstantial evidence regarding both the *actus reus* and *mens rea* of the offense of manufacturing methamphetamine. Therefore, this Court properly affirmed the trial judge’s denial of Appellant’s directed verdict motion.

Based upon the foregoing, Respondent submits that this Court did not misapprehend or overlook any issues of fact or law. Therefore, this Court should deny Appellant’s Petition for Rehearing.

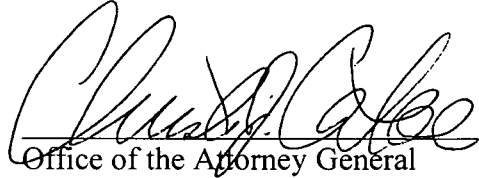
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<sup>2</sup> See State v. Logan, 405 S.C. 83, 93, 747 S.E.2d 444, 449 (2013) (citing State v. Littlejohn to reaffirm the well-established principle that there is one test by which the jury measures circumstantial evidence and “quite another” by which the judge measures circumstantial evidence in considering a directed verdict motion).

Respectfully submitted,

ALAN WILSON  
Attorney General

CHRISTINA J. CATOE  
Assistant Attorney General

A handwritten signature in black ink, appearing to read "Christina J. Catoe", written over a horizontal line.

Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737

**ATTORNEYS FOR RESPONDENT**

April 28, 2014

STATE OF SOUTH CAROLINA  
In The Court of Appeals

Appeal from Lexington County  
The Honorable George C. James, Jr., Circuit Court Judge

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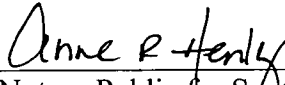
**AFFIDAVIT OF SERVICE**

The undersigned hereby certifies that a copy of Respondent's **Return to Petition for Rehearing** in the above-referenced matter has been served upon **Susan B. Hackett**, Division of Appellate Defense, South Carolina Commission on Indigent Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589, this **28<sup>th</sup>** day of **April, 2014**.

  
CHRISTINA J. CATOE  
Assistant Attorney General

Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3737

SWORN to before me this 28<sup>th</sup> day of April, 2014.

  
Notary Public for South Carolina  
My Commission Expires: 7/18/2017

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**SC Court of Appeals**



ALAN WILSON  
ATTORNEY GENERAL

April 28, 2014

**VIA HAND-DELIVERY**

The Honorable Jenny A. Kitchings  
Clerk of Court, S.C. Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

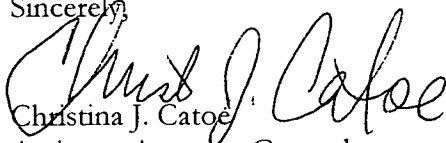
**RE: State of South Carolina v. Jeffrey Dodd Thomas**  
**Appellate Case No. 2012-212428**

Dear Ms. Kitchings:

Enclosed please find the State's **Return to Petition for Rehearing** in the above-referenced matter, along with **Proof of Service** of the same.

Thank you for your attention to this matter, and please do not hesitate to contact me at (803) 734-3713 should there be any questions or concerns.

Sincerely,

  
Christina J. Catoe  
Assistant Attorney General  
S.C. Bar No. 73562

CJC/

Enclosures

cc: Susan B. Hackett, Esquire  
Division of Appellate Defense  
Post Office Box 11589  
Columbia, SC 29211-1589

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