THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
The Honorable J. Derham Cole, Circuit Court Judge

Case No. 2011-GS-42-3015, 2011-GS-42-3016

The State, ...Respondent,

v.

Michael Anderson Manigan.....Appellant.

APPELLANT MICHAEL ANDERSON MANIGAN'S INITIAL REPLY BRIEF

Daniel S. "Chip" McQueeney, Jr.
S.C. Bar No. 06802
Pratt-Thomas Walker, P.A.
Post Office Drawer 22247
Charleston, SC 29413-2247
(843) 727-2256
E-mail: dsm@p-tw.com
Attorneys for Appellant

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STATEMENT OF THE ISSUES IN REPLY

I. Is the State's reliance on cases involving the recent possession of stolen property misplaced where, as here, Manigan explained the circumstances under which he found the trash bag; where, as here, any member of the general public had open and unimpeded access to the trash bag; and where, as here, the surrounding circumstances fail to establish substantial circumstantial evidence of guilt beyond a reasonable doubt?

II. Does the State fail to establish that the trial judge's charge on the "hand of one is the hand of all" is supported by the evidence?

STATEMENT OF FACTS IN REPLY

As a preliminary matter, the State recites several purported facts which do not fully reflect the cited testimony. For instance, the State asserts that "Appellant and Nephew kept interrupting Holcombe's yard work by asking her *how long she was planning on being outside*." **State's Br. p.3 (emphasis added).** Nevertheless, Holcombe's *actual* testimony reflects that Appellant Michael Manigan ("Manigan") asked about how much grass Holcombe was planning to cut, not how long she was *planning on being outside*:

> Q. Did he [Michael Manigan] say anything to you?
> A. He spoke to me several times, um, asking about how many yards I was gonna cut that day and cutting grass, yard work.
> Q. Was he asking general questions about yard work or was he asking questions, um, can you be a little bit more specific into what questions he was asking[?]
> A. Um, about how may yards I was gonna cut and how long it was gonna take, um, because I was cutting it, I was cutting so much grass and I kept getting interrupted and kept havin' to turn my lawn mower off so –

Trial Tr. p.170:6-21. Likewise, while Holcombe testified that she never had any *dealings* with Manigan, she immediately afterward confirmed that Manigan was her friend and neighbor:

> Q. Had you had any dealings with the defendant Michael Manigan before?
> A. No.
> Q. Did you—were you friends with him?

A. Um, I would say neighbors and friends—
Q. Did—
A. –yes.

Trial Tr. pp.170:22-171:3.

Finally, while there is evidence supporting the State's assertion that the black trash bag containing Vandahm's computer monitor and printer was found in Vandahm's back yard, the testimony was also clear that the trash bag was in a portion of Vandahm's backyard which remained unenclosed. **Trial Tr. p.110:8-22, p.111:6-13, pp.112:21-113:4.** There was no way to distinguish this area from the adjacent, vacant lot. In this respect, Vandahm confirmed that this area contained vines, dead trees, tree stumps, and trash. **Trial Tr. p.126:1-16.** She also believed that someone had used the area to dump trash and other stuff some time ago. **Trial Tr. p.126:10-16.** Holcombe similarly explained that the area included "a lot of trash and so forth . . . nobody really lived in that area so it was, um, thorns and trash, limbs and oak trees, that's basically all that it is." **Trial Tr. p.166:18-22.**

REPLY ARGUMENT

I. The State's reliance on cases involving the recent possession of stolen property is misplaced where, as here, Manigan explained the circumstances under which he found the trash bag; where, as here, any member of the general public had open and unimpeded access to the trash bag; and where, as here, the surrounding circumstances fail to establish substantial circumstantial evidence of guilt beyond a reasonable doubt.

The State contends that Manigan's fingerprints on property belonging to Vandahm within a trash bag located in the unenclosed portion of Vandahm's backyard, adjacent to a vacant lot, provide substantial circumstantial evidence of Manigan's guilt. This contention mischaracterizes the applicable law, which establishes that all surrounding circumstances must be considered in determining whether mere possession creates sufficient evidence to establish guilt beyond a reasonable doubt.

Here, Manigan offered a reasonable explanation for how his fingerprints came to be found on the goods; the trash bag containing the goods lay in an area full of trash and other debris to which the public generally had access; and other circumstances fail to establish Manigan's guilt beyond a reasonable doubt. Accordingly, Manigan's convictions should be reversed.

"The principle has long been recognized in this State that, where one is found in possession of recently stolen property, a rebuttable inference or presumption of fact arises that he is the thief." State v. Dewitt, 254 S.C. 527, 530, 176 S.E.2d 143, 145 (1970). "The foregoing inference is one of fact and not of law." Id. "It is evidentiary in nature and not conclusive." Id. "Upon the proof of possession of recently stolen goods, the law permits the inference of guilt unless the jury finds a reasonable explanation of such possession from all of the evidence presented at the trial." Id. "[T]his presumption is to be considered by the jury merely as an evidential fact, *along with the other evidence in the case*, in determining whether the State has carried the burden of satisfying the jury beyond a reasonable doubt of the defendant's guilt." Id. (citations and internal quotation marks omitted) (emphasis added); see also State v. Hilliard, 129 S.C. 452, 125 S.E. 132 (1924) ("The inference to be drawn from possession depends upon the circumstances of each case.").

The State ignores subsequent case law explaining that mere possession, even combined with the presence of a witness at the crime scene and a familial connection to the principal perpetrator, is not always sufficient to establish substantial circumstantial evidence of a crime.

For instance, in State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001), the Supreme Court explained, in the context of an arson case, that the "circumstantial evidence relied upon by the State is not substantial and merely raises a suspicion of guilt." This evidence

included the defendant's—Lollis'—placement of valuables in a storage room which was damaged by the fire and Lollis' possession of the storage key to such room on the day of the fire. Id.

The Court reversed the trial judge's refusal to direct a verdict, explaining: "Even viewing the circumstantial evidence in the light most favorable to the State, the evidence presented does not reasonably tend to prove Lollis' guilt." Id. "*Lollis presented a plausible explanation for placing valuables in the storage room on the day of the fire—he was trying to protect them from drywall dust as he remodeled his home.*" Id. (emphasis added). "Lollis' mere possession of a storage key is not substantial circumstantial evidence he asked, aided, or procured Burgess to burn the dwelling." Id. "*The possession of the key only indicates Lollis had access to the storage room on the day of the fire, it in no way demonstrates he aided Burgess with the fire.*" Id. (emphasis added)

"Lollis fully admits he was visiting the storage room when the fire occurred that morning." Id. "However, placing valuables in a storage room, without any other evidence linking him to the fire, *does not indicate he aided his wife in destroying their home, especially when he offered a valid reason for placing the items in storage, and Burgess confessed she acted alone.*" Id. (emphasis added). "Therefore, the possession of the key does nothing more than arouse suspicion of Lollis' guilt, and is an improper basis to deny a motion for directed verdict." Id.[1]

In State v. Bostick, 392 S.C. 134, 141-42, 708 S.E.2d 774, 778 (2011), the Supreme Court similarly rejected an assertion that the defendant's—Bostick's—purported possession of stolen items supplied substantial circumstantial evidence of guilt—this time in a murder case. The Court explained: "[W]e believe the State's evidence here raised only a suspicion of guilt by

[1] Likewise, the Court's decision in Lollis rebuts the State's assertion that Manigan's relationship to Gary Manigan adds sufficient circumstantial evidence to support a guilty verdict.

Bostick." Id. "No direct evidence linked Bostick to the crime scene or the items found in the burn pile." Id. "Moreover, there was no testimony tending to establish that Bostick had control over the burn pile." Id.

The Court continued: "When the State closed its case against Bostick, the following pieces of circumstantial evidence of his guilt had been presented: (1) [The victim's] car keys, calculator, and other items from her home were found in the Bostick family's burn pile; (2) the fire in the burn pile was accelerated with either kerosene or diesel fuel, and Bostick's mother did not use those accelerants when she burned things in the pile; (3) Bostick had a pattern that matched gasoline on his shoes and gasoline was the accelerant used for the house fire; and (4) while the DNA from the blood found on Bostick's jeans excluded about ninety-nine percent of the population, the blood could not be matched to [the victim's] DNA." Id. "The evidence presented by the State raised, at most, a mere suspicion that Bostick committed this crime." Id. "Under settled principles, the trial court should grant a directed verdict motion when the evidence presented merely raises a suspicion of guilt." Id.

Furthermore, in State v. Odems, 395 S.C. 582, 588, 720 S.E.2d 48, 51 (2011), the Supreme Court again reversed the denial of directed verdict motion—this time in a case charging the defendant—Odems—with burglary. The Court explained: "The State's case against Petitioner relied primarily on three pieces of circumstantial evidence: (1) the fact that less than ninety minutes after the burglary, police located Petitioner in the getaway car with the burglars *and the stolen goods*; (2) Petitioner fled from law enforcement; and (3) Petitioner asked an uninvolved person to lie for him." Id. (emphasis added).

"Even when viewed in the light most favorable to the State, the circumstantial evidence presented does not reasonably tend to prove Petitioner's guilt." Id. "The sole eyewitness in

Petitioner's case described only two men at the scene." Id. "A forensic investigator testified that she collected twelve sets of fingerprints in the car and from the stolen goods." Id. "These sets included prints from both Dawkins and Bell, but not Petitioner." Id. "Dawkins testified during the State's case-in-chief and *explained how Petitioner ended up in the car with the stolen goods even though he did not participate in the burglary* . . . ." Id. (emphasis added).

In the present proceeding, the evidence purportedly tying Manigan to the burglary and grand larceny included: (1) his conversation with Holcombe prior to the burglary; (2) Gary Manigan's conversation with Holcombe prior to the burglary; (3) Manigan's fingerprints on the goods found within a black trash bag lying in the unenclosed area behind Vandahm's house, which contained trash and other debris; (4) Manigan's conversations with Vandahm after the burglary; and (5) Gary Manigan's possession of Vandahm's stolen diamond earrings.

As in Lollis, Bostick, and Odems, this evidence is insufficient to support a guilty verdict, especially where, as here Manigan articulated a plausible, uncontroverted reason for his fingerprints being found on the goods within the trash bag. Likewise, the fact that the trash bag here was accessible to the public generally also warrants a reversal of the convictions. Cf. Walton v. State, 404 So. 2d 776, 777 (Fla. Dist. Ct. App. 1981) ("The inference of guilty taking that accompanies the possession of recently stolen goods is limited by the further requirement that possession be personal, that it involve a distinct and conscious assertion of possession by the accused, and that possession must be exclusive."); Castle v. Com., 83 S.E.2d 360, 364 (Va. 1954) ("The mere fact that stolen articles are found on the premises of a man of a family or in a place to which others have free access, without a showing of his actual conscious possession thereof, discloses no more than a *prima facie* constructive possession which alone is not sufficient to justify an inference of guilt."); People v. Ridley, 376 N.E.2d 43, 45 (Ill. Ct. App.

1978) ("Constructive possession is enough to convict for theft . . . , but if the place where the goods were found was equally accessible to others who were capable of having committed the theft, an inference of defendant's guilt cannot be made from that fact alone.").

Finally, even if Manigan's fingerprints established exclusive possession, the other surrounding circumstances fail to establish Manigan's guilt beyond a reasonable doubt. There is no evidence tying Manigan to the crime scene during the time in which the burglary occurred. As a resident of the neighborhood, it can hardly be said that his presence nearby constitutes evidence of guilt. Likewise, there is no evidence of any agreement with Gary Manigan to commit grand larceny or burglary, as "the existence of a familial relationship" is insufficient as a matter of law. See Odems, 395 S.C. at 588, note 3, 720 S.E.2d at 51. Finally, there is no evidence that Manigan's presence at Vandahm's house after the burglary distinguishes him from every other neighbor whom Vandahm testified visited her at the time.

Under these circumstances, the trial judge erred in refusing to grant a directed verdict in favor of Manigan for first degree burglary and grand larceny.

II. The State fails to establish that the trial judge's charge on the "hand of one is the hand of all" is supported by the evidence.

Both Lollis and Odems support Manigan's position that his mere familial relationship to the purported principal of a particular crime provides insufficient evidence of a criminal conspiracy or accomplice liability. See State v. Lollis, 343 S.C. 580, 585, 541 S.E.2d 254, 257 (2001) ("[P]lacing valuables in a storage room, without any other evidence linking him to the fire, does not indicate he aided his wife in destroying their home, especially when he offered a valid reason for placing the items in storage, and Burgess confessed she acted alone. Therefore, the possession of the key does nothing more than arouse suspicion of Lollis' guilt, and is an improper basis to deny a motion for directed verdict."); State v. Odems, 395 S.C. 582, 588, 720

S.E.2d 48, 51 (2011) ("[T]he State failed to present evidence of any agreement or collusion between Petitioner, Dawkins, and Bell. The existence of a familial relationship between the three individuals does not affect the validity of Dawkins's testimony or the analysis of the State's circumstantial evidence.").

This is especially the case where, as here, the investigating officer unequivocally testified that there was no evidence linking Gary Manigan to the first-degree burglary or the grand larceny. **Trial Tr. pp.238:16-239:19.** The State relied on this officer's testimony in an attempt to show that Manigan, not his nephew, committed the crimes: "The only evidence that we have in this case links Michael Manigan, his fingerprints were found at the scene, excuse me, on property in the victim's backyard in a closed trashbag." **Trial Tr. p.68:22-24.** "Gary Manigan's prints were not found anywhere, they weren't even found on the stolen property, Your Honor." **Trial Tr. pp.68:24-69:1.** "There's absolutely no other evidence that ties Gary Manigan to this case . . . ." **Trial Tr. p.69:1-2.**

Here, there is no evidence of criminal conspiracy or accomplice liability sufficient to charge the jury on the "hand of one is the hand of all." Under these circumstances, this charge served only to confuse the jury, which should have considered only whether substantial circumstantial evidence supported *Michael* Manigan's convictions.

Conclusion

Based on the foregoing, Manigan contends that the trial judge committed reversible error in denying his motions for a directed verdict and charging the jury on the "hand of one is the hand of all." Consequently, Manigan's convictions should be REVERSED.

In the alternative, if the Court determines only that the trial judge erred in charging the jury on accomplice liability, this Court should REVERSE the trial judge and remand for a new

trial.

Respectfully Submitted,

Daniel S. "Chip" McQueeney, Jr. (S.C. Bar No. 06802)
Pratt-Thomas Walker, P.A.
Post Office Drawer 22247
Charleston, SC 29413-2247
Tel.: (843) 727-2256
E-mail: dsm@p-tw.com
Attorneys for Appellant Michael Anderson Manigan

April 14, 2014
Charleston, South Carolina

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PROOF OF SERVICE

I certify that I have served the **Initial Reply Brief of Appellant Michael Anderson Manigan** on Respondent The State of South Carolina, by depositing a copy of it in the United States Mail, postage prepaid, on April 14, 2014, addressed to its counsel of record, Julie Kate Keeney, Assistant Attorney General, at Post Office Box 11549, Columbia, SC 29211

Daniel S. "Chip" McQueeney, Jr.
Attorney for Appellant Michael Anderson Manigan

PRATT-THOMAS | WALKER **ATTORNEYS AT LAW**

PROFESSIONAL ASSOCIATION

16 CHARLOTTE STREET
CHARLESTON, SC 29403

PO DRAWER 22247
CHARLESTON, SC 29413-2247

PHONE: 843.727.2200
FAX: 843.727.2238

WWW.P-TW.COM

E. DOUGLAS PRATT-THOMAS
G. TRENHOLM WALKER
W. ANDREW GOWDER, JR.
JON L. AUSTEN
LINDSAY K. SMITH-YANCEY (SC, NC)
THOMAS H. HESSE (SC, GA)
IAN W. FREEMAN (SC, CA)
DANIEL S. McQUEENEY, JR.
KATHLEEN FOWLER MONOC
JOHN P. LINTON, JR.

OF COUNSEL
THOMAS P. GRESSETTE, JR. (SC, USVI)

DIRECT DIAL: 843.727.2256
DIRECT FAX: 843.727.2231
EMAIL: dsm@p-tw.com

April 14, 2014

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: State v. Michael Anderson Manigan
Case Tracking No. 2013-000253
Our File No.: 7661-001

Dear Ms. Kitchings:

Please be advised that I represent Appellant Michael Anderson Manigan in the above-referenced appeal. Enclosed, please find an original and one copy of Manigan's initial reply brief. I would appreciate your returning a file-stamped copy of the initial reply brief in the enclosed self-addressed, stamped envelope. Thank you for your courtesies.

With kindest regards, I remain,

PRATT-THOMAS WALKER, P.A.

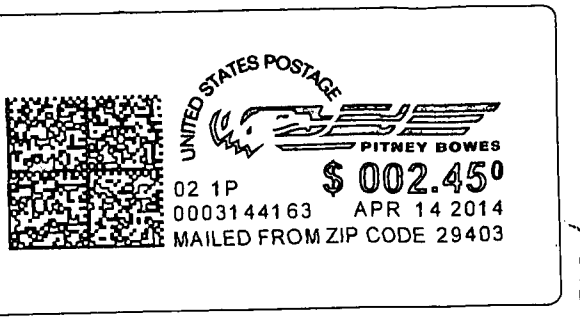
Daniel S. McQueeney, Jr.

DSM:yye
Enclosures

cc: Julie Kate Keeney
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(with enclosures)

Kathrine H. Hudgins
Appellate Defender
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589
(with enclosures)

Michael Anderson Manigan, #243544
Perry Correctional Institute
430 Oaklawn Road
Pelzer, SC 29669
(with enclosures)



PRATT-THOMAS | WALKER

ATTORNEYS AT LAW

16 CHARLOTTE STREET
CHARLESTON, SC 29403

PO DRAWER 22247
CHARLESTON, SC 29413-2247

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211