STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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JUN 03 2014

SC Court of Appeals

Appeal From Cherokee County
John C. Hayes, III, Circuit Court Judge

Appellate Case No: 2012-207559

The State,

Respondent,

vs.

Kevin Tyrone Bennett,

Appellant.

PETITION FOR REHEARING

This Court issued its opinion on May 28, 2014, reversing the trial court's denial of directed verdict on the charges of second degree burglary, petty larceny, and malicious injury to property. State v. Kevin Tyrone Bennett, Op. No. 5234 (S.C. Ct. App., filed May 28, 2014). The charges stem from a nighttime burglary of a community center. Pursuant to SCACR Rules 221 and 224, the State of South Carolina respectfully asks for rehearing on the following points that this Court may have overlooked or misapprehended it its decision:

This Court noted that the trial court is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis, citing State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004). However, in contradiction to Cherry's holding,

this Court based its opinion on two alternate hypotheses: (1) that Bennett had the ability to enter the community room, even though it was not generally open for the general public and no evidence indicated he was part of any group meeting in that room, and left his fingerprint on a television that coincidentally appeared to have been manipulated, but not stolen, during the burglary; and (2) that Bennett's blood could have been left on the wall in the computer room, directly underneath where the stolen television was located before it was removed, while Bennett was taking computer classes or otherwise being legally present in the room. Whether or not these alternate hypotheses were reasonable, the State's evidence did not need to exclude these alternate hypotheses in order for this case to be properly presented to the jury.

Ultimately, the question is whether, in view of the evidence in the light most favorable to the State, **a rational trier of fact** could find all the elements beyond a reasonable doubt. State v. Robinson, 310 S.C. 535, 539, 426 S.E.2d 317, 318 (1992) (finding any rational trier of fact could have found all the elements of the crime beyond a reasonable doubt in affirming the denial of a motion for directed verdict and citing Jackson v. Virginia, 443 U.S. 307 (1979)) (emphasis added).

The United States Supreme Court noted the following:

> [T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. . . . This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, **and to draw reasonable inferences from basic facts to ultimate facts**.

Jackson, 443 U.S. at 319 (second emphasis added).

Our Supreme Court recently articulated the following concerning the standard of

review:

> The trial court should grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty as suspicion implies a belief or opinion as to the guilt based upon facts or circumstances which do not amount to proof. On the other hand, a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.

State v. Hepburn, 406 S.C. 416, 753 S.E.2d 402, 409 (2013) (quoting State v. Cherry, 361 S.C. 588, 593, 606 S.E.2d 475, 478 (2004) (citations and internal quotation marks omitted)). This is consistent with the United States Supreme Court's observation concerning circumstantial evidence:

> Admittedly, circumstantial evidence may in some cases point to a wholly incorrect result. Yet this is equally true of testimonial evidence. In both instances, a jury is asked to weigh the chances that the evidence correctly points to guilt against the possibility of inaccuracy or ambiguous inference. In both, the jury must use its experience with people and events in weighing the probabilities. If the jury is convinced beyond a reasonable doubt, we can require no more.

Holland v. United States, 348 U.S. 121, 137-38 (1955) *cited with approval in* Jackson, 443 U.S. at 317 n.9.

The problem is in the present case, this Court has required more than what Hepburn, Jackson, and Holland require – the Court required that the State show someone was observing Bennett at all times in case he snuck into the community room and required the State to prove that the blood did not end up underneath the location of the stolen television by some unknown (and unlikely) innocent means. As a practical matter, Bennett would need to suffer an incredible series of unfortunate events to innocently leave behind such well-placed evidence to be misinterpreted. The jury is not irrational to conclude this imagined series of unfortunate events did not occur but instead find the

evidence firmly established Bennett's guilt beyond a reasonable doubt.

In the instant case, a window was shattered leaving a thousand pieces of glass. Droplets of blood were found directly under the space where the stolen television was previously located in the computer room. It was Bennett's blood based based on DNA analysis. This evidence creates a strong inference that Bennett cut himself with glass and left blood on the wall directly under the television set he stole. While Bennett may have been in this room on prior occasions, leaving blood behind is hardly a common event and its placement right below where the stolen television was located carries special significance. The most reasonable conclusion was that this blood was left during the burglary. The jury was not irrational for reaching this conclusion.

Additionally, the community room in which Bennett's fingerprints were found was not open to the public, but only available for meetings of groups. No evidence suggests he was involved with these groups. The State's evidence indicates he was never in the community room during regular operating hours and would not be allowed in the room merely to hang out or watch television. The television he left his fingerprints on appeared to have been manipulated as if someone attempted, but failed, to remove it, and two chairs were placed below the television as if the burglar was standing on the chairs during the attempt to remove the television. The State was not required to account for Bennett's presence during all operating hours on each occasion he was in the community center for the jury to make the rational conclusion that Bennett left his print on the television during the course of the burglary in which the television was manipulated in an attempt to steal it.

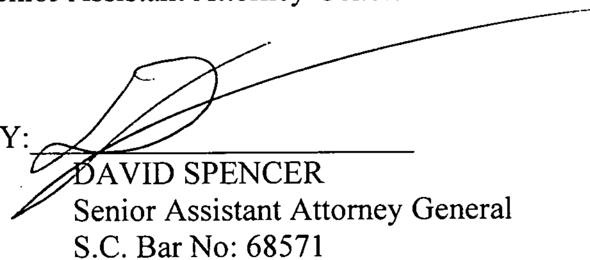
Rational jurors have the experience with people and events to determine whether the inferences pointed conclusively toward guilt. Indeed, a juror would not be irrational in concluding the totality of the evidence presented proved Bennett guilty beyond a

reasonable doubt. This Court should grant the petition for rehearing and affirm the trial court's denial of the directed verdict motion, thereby affirming Bennett's conviction and sentence.

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General



BY:______________________
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ATTORNEYS FOR RESPONDENT

June 3, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Cherokee County
Honorable John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

vs.

KEVIN TYRONE BENNETT,

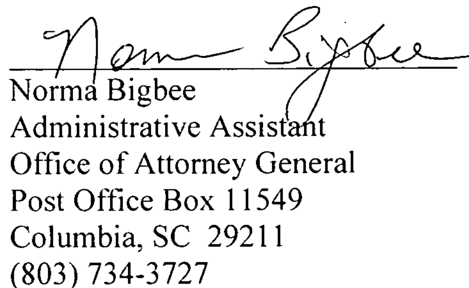
APPELLANT.

PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the State's Petition for Rehearing on Appellant's Attorney by depositing a copy of the same in the United States mail, postage prepaid, addressed to David Alexander, Esquire, Appellate Defender, SC Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.

This 3rd day of June, 2014.



Norma Bigbee
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ALAN WILSON
ATTORNEY GENERAL

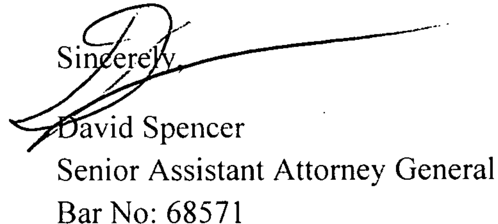
June 3, 2014

VIA HAND DELIVERY
The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: **State of South Carolina v. Kevin Tyrone Bennett**
Appellate Case No: 2012-207559

Dear Ms. Kitchings:

Enclosed please find the Original and one (1) copy of the State's Petition for Rehearing in the above case.



Sincerely,
David Spencer
Senior Assistant Attorney General
Bar No: 68571

DS/nb

Enclosures

cc: David Alexander, Esquire
Trisha Allen

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