

**ORIGINAL**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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**SC Court of Appeals**

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Certiorari to Richland County

Steven H. John, Circuit Court Judge  
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**RECEIVED**  
JUL 26 2012

JUL 26 2012

**S.C. Supreme Court**  
S.C. Supreme Court

RESPONDENT,

THE STATE,

V.

ADAMS GIBSON,

PETITIONER.

Appellate Case No. 2010-180806

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BRIEF OF PETITIONER  
\_\_\_\_\_

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### ISSUE PRESENTED

Whether the Court of Appeals erred by ruling petitioner was properly denied a directed verdict on the charge of murder where there was no substantial circumstantial evidence petitioner was acting in concert with his brother, Jacques, when Jacques apparently accidentally shot the decedent during a bar parking lot melee since the state's case against petitioner was essentially Shunta Wilson's discredited claim that she saw petitioner reach for a gun inside the automobile, and at some point shoot it, where the state did not even assert petitioner shot anyone, and the fact petitioner earlier telephoned Jacques about the problem at the club were insufficient to send the case to the jury on suspicion alone?

## STATEMENT OF FACTS

### **Procedural history**

Petitioner was indicted by the Richland County grand jury, along with his brother, Jacques Gibson for the offense of murder. Jacques Gibson was also indicted for possession of a firearm by a person under twenty-one years of age. R. 770 . There joint case came on for trial on May 21, 2007 before the Honorable Steven H. John and a jury. Nathaniel Roberson represented petitioner. I.S. Levy Johnson represented Jacques Gibson. Detrich Lake and Kathryn “Luck” Campbell were the assistant solicitors. R. 1.

At the conclusion of the trial on May 24, 2007 the jury found both petitioner and his brother guilty. R. 766, l. 20 – 767, l. 9. Judge John sentenced both petitioner and his brother to thirty-years imprisonment. R. 769, ll. 5 – 20.

The Court of Appeals affirmed petitioner’s conviction in State v. Adams Gibson, 390 S.C. 347, 701 S.E.2d 766 (2010). App. 1-6. Petitioner sought rehearing. App. 7-11. Rehearing was denied. App. 12-13.

Petitioner sought certiorari which was granted by this Court. This brief of petitioner follows.

### **Relevant facts**

On the night of September 5, 2005 Torri Boyd went to Chance’s Sports Bar on Two Notch Road in Columbia. Boyd was twenty-six years old, and he was from Winnsboro. A dispute, and then chaos, broke out between the men from Winnsboro and the men from Ridgeway in the parking lot of the club that night. R. 2, l. 13 –7, l. 18.

Boyd claimed petitioner Adams Gibson told him at one point inside the Sports Bar: “Don’t be looking at my girl . . .” R. 6, ll. 8 – 22. When the fight later broke out Boyd recalled: “I grabbed

the first person I could grab and fell to the ground, and I was getting kicked and hit basically.” Boyd said he had “no idea” who was hitting him “when everything started breaking loose.” R. 16, l. 1 – 17, l. 5. Boyd claimed petitioner Adams was involved in the fight in some manner. R. 31, ll. 7 – 9. (Hereinafter “Adams.”)

Winnsboro native Ravaris Henry was also at Chance’s that night with Boyd and the decedent. R. 54, l. 3- 56, l. 24. Henry testified the evening with the Winnsboro men and the Ridgeway men started out well with everybody shaking hands “hugging, talking, laughing . . .” R. 57, l. 15 – 58, l. 7. However, Henry testified that when the fight later started there was “total chaos, yelling and all that.” R. 62, ll. 3 – 18.

During the chaos Henry saw petitioner’s brother, Jacques, shooting his gun in the air as he was driving away. R. 65, l. 5 – 66, l. 3. There would be evidence Jacques was responsible for the decedent being hit. Jacques acknowledged in his brief before the Court of Appeals that he probably was responsible for unintentionally shooting the decedent.

Marcus Tucker was from Ridgeway. He knew Adams and his brother Jacques. R. 296, l. 10 – 299, l. 22. Tucker remembered the fight starting that night with the men from Winnsboro. R. 299, l. 6 – 303, l. 18. He did not see Adams with a gun or shooting a gun that evening. R. 299, ll. 8 – 11.

The only person at Chance’s Sports Bar that night who claimed to have seen Adams with a gun was Shunta Wilson. Wilson claimed the manager told the men to either keep the noise down, or leave the club. R. 311, l. 11 – 314, l. 22. Wilson said things “kind of died down a little bit” after that and then the fight later started outside the club. R. 314, l. 7 – 315, l. 22.

Wilson said she saw a “white Escort” pull up, and “a girl gets out.” This woman attempted to break up the fight. Wilson claimed she saw Adams go to the Escort at this time, reach underneath

the seat, and pull out a gun. R. 315, l. 18 – 316, l. 16. Wilson said as people were trying to get back inside the bar she heard some shots go off and she saw the Escort “speed off.” R. 316, l. 15 – 317, l. 13.

Wilson would later identify Adams from a photo line-up. She claimed she saw Adams shooting a gun that evening amid the chaos. R. 329, l. 2 – 330, l. 19. However, as will be seen infra, the state *did not claim it was petitioner Adams* that shot the decedent, and her identification testimony *was discredited*.

Lakisha Davis went to pick-up Adams from the Sports Bar with Jacques. Davis testified she heard shots fired that night but she never saw Adams involved in the fight. R. 186, l. 7 – 187, l. 13. Lakisha also said she did not see Adams with a gun. R. 193, ll. 7 – 18.

Demetric Davis testified he was with Lakisha and Adams that evening. R. 197, ll. 3 – 21. Demetric also said he did not see Adams involved in the fight or shooting a gun. R. 209, l. 25 – 211, l. 21.

Stephon Willingham, Jr., also went with Jacques to get Adams from the Sports bar. R. 280, l. 18 – 286, l. 20. Willingham said he saw Jacques get a gun but he never saw Adams with a gun. R. 285, l. 12 - 294, l. 6.

Adams gave a statement to the police in which he said he telephoned Lakihsa and his brother Jacques “to come and pick me up from down there [at the Sports Bar]” because he thought there was going to be trouble. R. 606, l. 15 – 607, l. 6. Adams denied that he possessed a gun that evening or that he was responsible for the shooting. R. 608, l. 2 – 609, l. 8.

Vernon Davis testified that Jacques fired a weapon that evening and he claimed Adams was involved in the fist fight. R. 568, ll. 5 – 23.

### **Motions and request to charge**

Defense counsel moved for a directed verdict noting that only one witness -- Wilson -- claimed Adams even had a weapon, or discharged that weapon. Defense counsel further noted that Wilson's description of the man involved clearly did not match Adams. Defense counsel argued the judge should direct a verdict under these circumstances. R. 656, l. 11 – 661, l. 11.

The solicitor responded that the state never claimed Adams "fired the fatal shot" but she maintained Adams was still responsible for the decedent's death in the bar fight under the "hand of one is the hand of all." R. 656, l. 14 – 697, l. 22. The judge denied the directed verdict motion. R. 658, l. 23 – 659, l. 3.

Defense counsel would renew his directed verdict motion. R. 662, l. 25 – 663, l. 22. Defense counsel argued there was no evidence Adams shot and killed the victim and that the evidence was insufficient to go to the jury under the "hand of one is the hand of all theory." R. 662, l. 25 – 663, l. 22. The motion was again denied.

### **Court of Appeals**

The Court of Appeals noted that "the State does not contend Adams fired the fatal shot. Rather, the State simply maintains there is *sufficient* circumstantial evidence that Adams agreed to, and did, act in concert with Jacques to assault the Winnsboro group; thus, sufficient evidence of Adams's guilty existed to submit the issue to the jury under the hand of one is the hand of all theory." App. 4. (emphasis added).

The Court of Appeals also wrote that the evidence created an inference "that Adams informed Jacques of the situation [by telephone] and the reason for the call "may not have been

solely for the purpose of removing Adams from the scene, and that Adams was aware a firearm was available for him to retrieve from Jacques's white sedan." App. 4.

### **Rehearing**

Adams argued on rehearing that "even with this inference about the telephone call, and the inference petitioner was aware of a gun in the Jacques car, this respectfully did not constitute substantial circumstantial evidence that petitioner was guilty of murder. State v. Adams Gibson, 390 S.C. 347, 701 S.E.2d 766 (2010); [the present Southeastern digest citation added]; See State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000)" App. 7.

Petitioner wrote that comparing the facts of this case to State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000) where this Court held the defendant was entitled to a directed verdict, where the *inferences in favor of the state raised a strong case* that Martin was guilty showed the unfairness of the Court's holding here:

The evidence in this case was only sufficient to allow the jury to speculate that it may have been petitioner who was responsible for the victim being shot. As this Court acknowledged, "the witness accounts of the evening provide no clear picture of who fired weapons or how many shots were fired." State v. Adams Gibson, Op. No. 4747, Shearouse's Adv. Sh. #40 at p. 63.

Holding petitioner responsible for shooting the victim during this *mêlée* can respectfully not be reconciled with the holding in Martin.<sup>1</sup> This evidence, including the sole "eyewitness account" of [Wilson], which was contradicted by evidence that the man she was identifying as petitioner by his clothing *was really Jacques*, was insufficient under the precedents of our Supreme Court to take the case to the jury, and the judge should have directed a verdict for petitioner. See, also, State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984).

In essence, the facts of this case show Adams telephoned Jacques who later arrived. Jacques then independent of petitioner is

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<sup>1</sup> Petitioner for ease of reference change "appellant" to "petitioner" in this brief.

involved in an altercation. A melee develops in which Jacques shoots his gun. Petitioner is convicted of murder. That is intuitively unfair even while *not considering* the evidence of self-defense and that Jacques did not fire the first shot.

App. 8-9. (emphasis added).

## ARGUMENT

The Court of Appeals erred by ruling petitioner was properly denied a directed verdict on the charge of murder where there was no substantial circumstantial evidence petitioner was acting in concert with his brother, Jacques, who apparently shot the victim during a bar parking lot melee. The state's case against petitioner was essentially one discredited witness, Shunta Wilson, who claimed she saw petitioner reach for a gun inside the automobile, and at some point shoot it, since this isolated claim, and the fact petitioner earlier called Jacques about the problem at the club was insufficient to send the case to the jury. Petitioner's case should not have gone to the jury as this in reality is a guilt by association and not a substantial circumstantial evidence case.

As seen, the Court of Appeals relied heavily on the inference that the call from Adams to Jacques may not have been solely for the purpose of removing Adams from the scene, and that Adams knew Jacques had a gun in his car. Respectfully, this is speculation and conjecture and it does not rise to the level of *substantial* circumstantial evidence Adams was guilty of murder under the "hand of one is the hand of all" theory. It much more closely resembles a case of allowing the jury to convict of murder under an impermissible inference of *guilty by association*. That guilt by association was as impermissible in an accomplice liability case as it was a conspiracy case. Holding Petitioner Adams Gibson in essence *strictly liable* for the actions of his brother Jacques attacks the fundamental fairness of our criminal justice system. See, State v. Barroso, 328 S.C. 268, 272, 273, 493 S.E.2d 854, 856 (1997).

The only witness attributing a gun to Adams was Wilson. "She [Wilson] testified that she saw Adams . . . holding a gun. R. 375, ll. 6-9. She also heard the shots. R. 375, l. 11. However, she did not answer whether she saw Adams shoot the gun. R. 375, ll. 13-17." The *state* quickly

acknowledged the shakiness of *even this vague evidence given identification problems*. See Respondent's brief at 10; Respondent's brief at 10, n. 16.

The Court of Appeals correctly noted that the state *did not contend* Adams was guilty of murder because he shot the decedent. Rather, Adams could allegedly be found guilty of murder because of the actions of Jacques under the "hand of one is the hand of all" theory. This goes too far under the facts of this bar fight – which got out of control – and where some young people were unfortunately armed.

There was no substantial circumstantial evidence that should have allowed the Court to allow the jury to speculate that Adams was acting in concert with Jacques during the chaos that clearly was happening at Chance's Sports Bar on Two Notch Road that night. Since there was not substantial circumstantial evidence Adams and Jacques were acting in concert at all, and that Jacques's actions were the natural and foreseeable result of what they contemplated, the judge erred by refusing to direct a verdict. See State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000); State v. Cherry, 348 S.C. 281, 559 S.E.2d 297 (2002); State v. Al-Amin, 353 S.C. 405, 478 S.E.2d 32 (Ct. App. 2003).

Where the state relies exclusively on circumstantial evidence, the trial judge is only required to submit the case to the jury if there is any substantial circumstantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced. State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001); State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000); State v. Williams, 321 S.C. 327, 332, 468 S.E.2d 626, 629 (1996).

If the state fails to produce substantial circumstantial evidence the defendant committed the particular crime the defendant is entitled to a directed verdict. State v. Rothschild, 351 S.C. 238, 569 S.E.2d 346 (2002); State v. Walker, 349 S.C. 49, 562 S.E.2d 313 (2002). "Mere suspicion" of

guilt is insufficient to take the case to the jury, and beyond a directed verdict motion. State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001).

In State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011), this Court held the state failed to produce substantial circumstantial evidence Bostick killed his neighbor, Ms. Polite, and set her house on fire. The state's case was that Ms. Polite worked at her church and always brought the collection proceeds home on Sunday afternoon. The state presented evidence that investigators found her personal items burned by an accelerant, including a watch and two sets of car keys in a burn pile on Bostick's next door property. Bostick's mother testified she never used accelerants in the burn pile.

This Court noted that the evidence also revealed that Bostick had a pattern of gasoline on his shoes and gasoline was the accelerant used to start the fire at the Polite home. This Court held this evidence raised a suspicion that Bostick may have been guilty but it was not sufficient for the case to have gone to the jury.

Earlier, and similarly, in State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000) this Court held that the state's circumstantial evidence against Martin was insufficient to take the case to the jury. In Martin the defendant borrowed his girlfriend's car which was later placed near the scene of the murder.

On the morning after the murder the manager of a restaurant found several bags of garbage near the bar where defendant Martin and co-defendant Wilson picked up Martin's girlfriend late the prior night. Inside the trash were items belonging to the victim. Also found were inside were latex gloves similar to those Martin's girlfriend used to clean her dogs.

When Martin girlfriend's asked him why he and co-defendant Wilson were so late in picking her up from the bar, defendant Martin replied "some shit happened" and co-defendant Wilson added "someone may have died tonight."

This Court held that this circumstantial evidence was not substantial circumstantial evidence, and it was insufficient to take the case to the jury. The Court in Martin cited State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984) which was a case which provided a strong suspicion of the defendant's guilt.

In State v. Schrock, Schrock admitted to the police that he smoked Marlboro brand cigarettes – the same brand as the cigarette butts found at the murder scene. However, a saliva test could not match a cigarette butt to the defendant. A similar footprint to Schrock's was found at the scene and nearby the scene. Schrock apparently later disposed of the clothes and shoes he had been wearing and he did not present an alibi. This Court held this evidence only raised a suspicion of Schrock's guilt and that he was entitled to a directed verdict.

Further, in State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004), this Court affirmed the holding of the Court of Appeals that a directed verdict should have been issued. The victim, Cox, was shot, and his body found off of a road in Colleton County. On the last day Cox was seen alive he borrowed a friend's BMW Z3 to go to the dentist's office. The car was found in a parking lot in Johnson City, Tennessee and there was evidence the defendant telephoned a friend from 10 miles away from the car. The defendant's fingerprints were found inside the car. This Court reasoned the state only proved that the defendant was in the BMW on the last day that Cox was seen alive, and that was insufficient evidence to make this a jury question.

In State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000), as this Court wrote: "Hugh Mathis's home was burglarized and two guns were stolen. Mitchell, 341 S.C. at 408, 535 S.E.2d at

127. Mitchell had been a guest at Mathis's home on several occasions. Id. The day after the burglary was reported, investigators found a fingerprint on a screen leaning up against the house which matched Mitchell. Id. Mitchell was arrested and convicted of burglary; during his trial, Mitchell moved for a directed verdict, which was denied by the circuit court. Id.

The fingerprint was the only evidence linking Mitchell to the burglary. Id. at 409, 535 S.E.2d 126. After first commenting that the evidence presented was entirely circumstantial, this Court determined "the fact that [Mitchell's] fingerprint was on a screen that was propped up against the house does not prove entry where [Mitchell] had been in and around [Mathis's] house at least three times prior to the burglary." Id. The State did not produce any evidence concerning whether the screen was on the window when the window was broken or when the screen had been removed. Id. The Court accordingly affirmed the Court of Appeals' ruling that Mitchell was entitled to a directed verdict. Id." State v. Bostick, 392 S.E.2d at 141, 708 S.E.2d at 777-778.

Petitioner Adams Gibson was most respectfully entitled to a directed verdict in this case. This case is an extension of the dangerous "hand of one is the hand of all" to a perilous "strict liability," guilt by association "corruption of blood" extent.

CONCLUSION

By reason of the foregoing argument, an order of acquittal should be issued.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. M. Dudek", written over a horizontal line.

Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR PETITIONER.

This 23rd day of July, 2012

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Certiorari to Richland County  
Steven H. John, Circuit Court Judge

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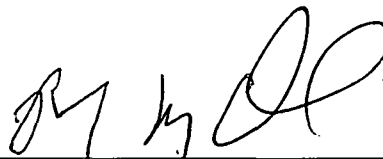
APPELLANT

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CERTIFICATE OF SERVICE

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I certify that a true copy of the brief of petitioner, in this case has been served on Alphonso Simon, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 23rd day of July, 2012.




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Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 23rd day  
of July, 2012.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: October 2, 2013.