

STATE OF SOUTH CAROLINA  
In the Supreme Court

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

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AUG - 7 2014

Opinion No. 2014-UP-143 (S.C. Ct. App. filed 4/2/2014)  
Appellate Case No. 2014-001359

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**S.C. Supreme Court**

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

JEFFREY DODD THOMAS,

PETITIONER.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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**ATTORNEYS FOR RESPONDENT**

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## ISSUE PRESENTED

The Court of Appeals properly upheld the denial of Petitioner's directed verdict motion on the charge of manufacturing methamphetamine because the State presented substantial circumstantial evidence of Petitioner's guilt where the evidence reflected that Petitioner's truck contained (1) materials and equipment used to manufacture methamphetamine, (2) an empty starter fluid container with a hole punched in the bottom which indicated it had been used in the production of methamphetamine, and (3) the finished product, methamphetamine.

## STATEMENT OF THE CASE

Petitioner was indicted in Lexington County in September 2011 for possession of methamphetamine, possession of Xanax, and manufacturing methamphetamine. On May 22, 2012, Petitioner proceeded to trial before the Honorable George C. James, Jr., and a jury. The jury found Petitioner guilty as indicted, and Judge James sentenced Petitioner to concurrent sentences of three years for possession of methamphetamine, six months for possession of Xanax, and seven years, suspended to three years of active time and three years of probation, for manufacturing methamphetamine. A timely notice of appeal was served and filed.

On April 2, 2014, the South Carolina Court of Appeals affirmed Petitioner's convictions. See State v. Thomas, Op. No. 2014-UP-143 (S.C. Ct. App. filed 4/2/2014). Petitioner's request for rehearing was denied on May 22, 2014. Petitioner timely submitted a Petition for Writ of Certiorari to the Court of Appeals, and this Return follows.

## ARGUMENT

**The Court of Appeals properly upheld the denial of Petitioner's directed verdict motion on the charge of manufacturing methamphetamine because the State presented substantial circumstantial evidence of Petitioner's guilt where the evidence reflected that Petitioner's truck contained (1) materials and equipment used to manufacture methamphetamine, (2) an empty starter fluid container with a hole punched in the bottom which indicated it had been used in the production of methamphetamine, and (3) the finished product, methamphetamine.**

### Petitioner's Reasons to Grant Certiorari

One of Petitioner's proffered reasons for granting his Petition for Writ of Certiorari is that the "issue presented is a novel question of law because no decision of this Court has interpreted the manufacturing methamphetamine statute." (Petition for Writ of Certiorari, p. 5). However, in the State's view, the directed verdict issue in this case does not require an interpretation of the manufacturing methamphetamine statute. The State does not dispute that S.C. Code § 44-53-375(D), which states that "[p]ossession of equipment or paraphernalia used in the manufacture of . . . methamphetamine is prima facie evidence of intent to manufacture," goes only to intent or *mens rea*. (See Petition for Writ of Certiorari, p. 17-18). The sole issue in this case is the traditional directed verdict issue of whether or not the State presented sufficient evidence supporting the charge of manufacturing methamphetamine. For the reasons set forth below, Petitioner's directed verdict motion was properly denied because substantial circumstantial evidence supported both the *mens rea* and *actus reus* of the offense where the State presented evidence that Petitioner's truck contained (1) materials and equipment used to manufacture methamphetamine, (2) an empty starter fluid container with a hole punched in the bottom which indicated it had been used in the production of methamphetamine, and (3) the finished product, methamphetamine.

## Discussion

In ruling on a motion for directed verdict, the trial judge must view the evidence, and all of its reasonable inferences, in the light most favorable to the State. See State v. Frazier, 375 S.C. 575, 581, 654 S.E.2d 280, 283 (2007). If the State presents direct or substantial circumstantial evidence reasonably tending to prove the guilt of the defendant, including evidence from which his guilt can be logically deduced, the defendant's directed verdict motion is properly denied. State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001). This Court has stated that the appropriate test to be applied when reviewing a directed verdict motion in a case relying solely on circumstantial evidence is as follows:

When the state relies exclusively on circumstantial evidence and a motion for a directed verdict is made, the circuit court is concerned with the existence or nonexistence of evidence, not with its weight. The circuit court should not refuse to grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. "Suspicion" implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. However, **a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.**

State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004) (citations omitted) (emphasis in original). On appeal from the denial of a motion for a directed verdict, the appellate court may only reverse the trial court only if there is no evidence to support the trial court's ruling. See, e.g., State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002).

At issue in this case is the charge of manufacturing methamphetamine. Under S.C. Code § 44-53-375(B), "[a] person who manufactures, distributes, dispenses, delivers, purchases, or otherwise aids, abets, attempts, or conspires to manufacture,

distribute, dispense, deliver, or purchase, or possesses with intent to distribute, dispense, or deliver methamphetamine or cocaine base, in violation of the provisions of Section 44-53-370, is guilty of a felony . . . .” In Petitioner’s case, the solicitor agreed at trial that he was proceeding only under a theory of manufacturing under S.C. Code § 44-53-375(B) and not distributing, dispensing, delivering, purchasing, or attempting or conspiring to manufacture, and the jury was subsequently charged with only manufacturing. (See R. p. 166, lines 1-18; p. 214-15). S.C. Code § 44-53-110 defines “manufacturing,” in pertinent part, as “the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. . . .” “Possession of equipment or paraphernalia used in the manufacture of cocaine, cocaine base, or methamphetamine is prima facie evidence of intent to manufacture.” S.C. Code § 44-53-375(D).

In this case, Petitioner’s truck - which he admitted was his and was registered to him - contained many of the materials necessary to make methamphetamine using the so-called “shake and bake” method. (R. p. 5-8; p. 57-58; p. 65-70; p. 122-45). Petitioner’s truck also contained an empty starter fluid can with a hole punched in the bottom. (R. p. 58, lines 10-12). The methamphetamine expert testified there was no reason to punch out the bottom of a can of starter fluid other than 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

ether can,” the items found in Petitioner’s truck were used for the production of methamphetamine. (R. p. 137, lines 1-5; p. 144, lines 16-25). Critically, Petitioner’s truck also contained the most telling evidence of all that Petitioner had manufactured methamphetamine – the finished product, methamphetamine itself. (R. p. 98, lines 1-14).

Since methamphetamine does not occur naturally, the fact that methamphetamine exists means that *someone* made it. In this case, the jury had to resolve the question of who made the methamphetamine. In the State’s view, the trail Petitioner left behind constituted substantial circumstantial evidence supporting that he was the one who manufactured the methamphetamine. The methamphetamine was found in a truck registered to Petitioner and which Petitioner admitted was his, and Petitioner was the only person present with his truck. In addition to the methamphetamine, Petitioner’s truck contained numerous items that are commonly used in the manufacture of methamphetamine. A jury could reasonably conclude from Petitioner’s possession of these items that Petitioner intended to manufacture methamphetamine **and** that he was a regular manufacturer of methamphetamine. See S.C. Code § 44-53-375(D) (“Possession of equipment or paraphernalia used in the manufacture of cocaine, cocaine base, or methamphetamine is prima facie evidence of intent to manufacture.”). Further, Petitioner’s truck contained a punched-out starter fluid can, which, according to the expert testimony, indicated Petitioner had already made methamphetamine.<sup>2</sup> It is reasonable to conclude that a person who has made methamphetamine, and who regularly

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<sup>2</sup> The fact that Petitioner did not possess all of the materials needed to make methamphetamine in the future was irrelevant because the evidence discussed above indicated Petitioner had already manufactured methamphetamine and had disposed of the potentially dangerous leftover trash, including the bottle used to shake the chemicals for the initial chemical conversions. (See Petition for Writ of Certiorari, p. 19-20).

makes the drug, is the person who made methamphetamine found in that person's sole possession.

Notably, one of the attractive features of the "shake and bake" method of manufacturing methamphetamine is that a person can make methamphetamine fairly quickly and with a lower risk of detection. (See R. p. 155, lines 9-10). Because Petitioner 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 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>3</sup> constituted substantial circumstantial evidence regarding both the *actus reus* and *mens rea* of the offense of manufacturing methamphetamine. Accordingly, the Court of Appeals' decision upholding the denial of Petitioner's directed verdict motion should be affirmed.<sup>4</sup> See State v. Curtis, 356 S.C. 622, 633-34, 591 S.E.2d 600, 605 (2004) ("If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury.").

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<sup>3</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).

<sup>4</sup> The manufacturing liquor cases Petitioner cites are factually distinguishable (see Petition for Writ of Certiorari, p. 14-17); but, in any event, the "overt act" requirement from those cases was met in Petitioner's case since Petitioner had already completed the act of manufacturing of methamphetamine as evidenced by the finished product.

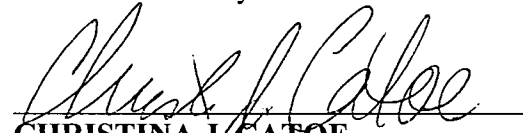
CONCLUSION

For the reasons discussed above, Respondent requests that this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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**ATTORNEYS FOR RESPONDENT**

August 7, 2014

STATE OF SOUTH CAROLINA  
In the Supreme Court

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

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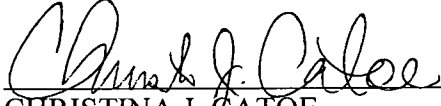
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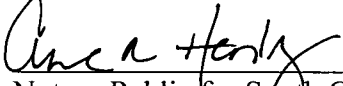
**AFFIDAVIT OF SERVICE**

The undersigned hereby certifies that a copy of the State's **Return to Petition for Writ of Certiorari** in the above-referenced matter has been served upon **Susan B. Hackett**, South Carolina Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589, this 7<sup>th</sup> day of **August, 2014**.

  
CHRISTINA J. CATOE  
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SWORN to before me this 7<sup>th</sup> day of August, 2014.

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