THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. Supreme Court

APPEAL FROM YORK COUNTY
In the Court of Common Pleas

Honorable William H. Seals, Jr.., Circuit Court Judge

Appellate Case No. 2013-001143

The State ..... Petitioner,

vs

Francis Larmand ..... Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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Question Presented

Did the Court of Appeals err in reversing the circuit court's denial of Respondent's directed verdict motion when the state did not present substantial circumstantial evidence that Frank Larmand with Leo Lemire had the premeditated intent to inflict bodily injury upon Ryan Lochbaum?

STATEMENT OF FACTS

Kerriann Larmand, the wife of the Defendant Frank Larmand, owned and operated a business in the Charlotte area known as Pop-A-Lock. The business was a basic locksmith business. As part of a franchise operation, the business would also respond to calls to open car doors and other emergency calls. Rec. on App. at 324. Mrs. Lamard had reason to believe that someone in the company was stealing calls when a cash customer called for services such as a request to unlock an automobile. As a result she, with the assistance of her husband, set up a call for service in an attempt to determine who was stealing the calls from her company. Rec. on App. at 326, ll 12-25 to 327, ll 1-23.

As part of the mystery call, Frank Larmard was to go to the Knights Stadium outside of Charlotte. There he would wait and see who came in response to the mystery call. Prior to leaving Kanapolis, NC, where he lived, he met his brother-in-law, Leo Lemire. He requested Mr. Lemire to join him as another person was needed to receive the call as Mr. Lemire's voice would not be recognized by any employee or former employee of Pop-A-Lock who may be involved. Rec. on App. at 371, ll 20-372, ll 1-12. Mr. Larmand went to Knights Stadium and his wife placed the called requesting assistance in unlocking an automobile. The call was placed at 10:14 pm. Rec. on App. at 329, ll 10-22. Mike Taylor, who at the time was employed by Pop-A-Lock, received the call at 10:18 pm. Rec. on App. at 23-25. Mr. Taylor called Ryan Lochbaum, a former employee who was terminated in October of 2008, at about 10:43. Rec. on App. at 176, ll 6-8. Mr. Lochbaum testified that Mr. Taylor was simply asking him for directions to Knight Stadium. He had previously told officers involved in the case that Mr. Larmand and Mr. Lemire were trying to lure him out to Knight Stadium that evening. Rec.

on App. at 174, ll 5-11.[1] Mr. Lochbaum claimed that he was being "lured" to Knights Stadium is puzzling. If he was not attempting to steal calls from Pop-A-Lock, then he could not be lured to Knight's Stadium by a service call to Pop-A-Lock. When questioned by the officers about the alleged luring to Knight's Stadium, Mr. Lochbaum responded "Because Mrs. Larmand overheard me talking to the detectives at the bond hearing. Because they asked me specifically who gave me that information, and I told them if I told you that would leave me to be tried." Rec. on App. at 133, ll 16-19.[2] As he had been terminated several months before, Mr. Lochbaum had no legitimate reason to be responding to a call for Pop-A-Lock. Mr. Lochbaum had also been denied unemployment benefits because of his misconduct while employed by Pop-A-Lock. This upset Mr. Lochbaum. Rec. on App. at 167, ll 3-15.

After no one from Pop-A-Lock, or anyone trying to steal the service call, came to Knights Stadium, Mr. Larmand decided to go by the residence of Mr. Lochbaum. He went for the purpose of seeing if any employees of Pop-A-Lock were there and to determine if a red car with a Pop-A-Lock sign was at the residence. Rec. on App. at 377, ll 1- 12. Mrs. Larmand had received reports of a red car with a Pop-A-Lock sign being seen in the Charlotte area. Rec. on App. at 341, ll 17-25. When Mr. Larmand drove by Mr. Lochbaum's residence, he noticed several people gathered around a van but did not see a red car. He parked his truck past the house and instructed Mr. Lemire to remain in the truck. Rec. on App. at 378, ll 12-16. He then

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[1] If the plan was to lure Mr. Lauchbaum to a secluded area of Knights's Stadium, the new plan to lure him to a better lighted area in front of friends does not make much logical sense.

[2] This statement implies that Mr. Lochbaum had something to hide by being truthful to the officers. Contrary to the implication in the Petitioner's brief, Mr. Lochbaum did not tell the officer who gave him the information. Br. of Pet. at 6.

walked to the residence of Mr. Lochbaum. He stood in the street near the rear of the van for a short period of time until someone acknowledged his presence. He stated that he wished to speak to Mr. Lochbaum. A person notified Mr. Lochbaum that someone was there to see him. Rec. on App. at 380, ll 12-20. Mr. Lochbaum then asked the others present to leave as he wanted to talk to Mr. Larmand in private. Rec. on App. at 72, ll 10-14. Mr. Larmand and Mr. Lochbaum then moved slightly down the street in the direction of the houses where his neighbors lived. Rec. on App. at 80, ll 1-9; 65, ll 1-3; 105, ll 7-9.

Mr. Lochbaum's house is the last house before a large area of empty lots.[3] The area was lit with a street light, the porch light of Mr. Lochbaum's residence and the open door from the garage of Mr. Lochbaum. Rec. on App. at 196, ll 4-9; 100, ll 10-15. At least three other people were present when Mr. Lochbaum asked to speak to Mr. Larmand in private. Rec. on App. at 68, ll 21-25 to 69, ll 1-4. The van was pointed into the driveway. Mr. Lochbaum and Mr. Larmand met on the right side of the van. They never moved together toward the left side of the van and the empty lots. Rec. on App. at 105, ll 7-9. The entire incident occurred near the property line between Mr. Lochbaum's house and Mr. Jesse Harris' house. Rec. on App. at 65, ll 1-3. This area was better lit than the side of the van toward the empty lots.

At no time did Mr. Larmand strike, hit or threaten to inflict harm upon Mr. Lochbaum or encourage Mr. Lemire to inflict any harm. Rec. on App. at 117, ll 12-18; 151, ll 18-19; 142, ll 12-13; 143, ll 5-13. After Mr. Lochbaum and Mr. Larman had spoken for a brief time, Mr. Lemire, who had left the truck after Mr. Larmand left, came at Mr. Lochbaum with a

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[3] The house and the empty lots beside it can be seen on the Google Earth view for April 10, 2010. This is the date closest to the date of the incident. Visited by this writer on August 9, 2014. This view is virtually identical to the exhibit introduced by the state.

pistol. Rec. on App. at 150, ll 14-22. Mr. Lochbaum turned to confront Mr. Lemire and grabbed the pistol. In the struggle they both fell to the ground. At that point the neighbors who were with Mr. Lauchbaum earlier came and helped subdue Mr. Lemire.[4] When the two fell to the ground, Mr. Lochbaum testified that Mr. Larmand tried to pull him off of Mr. Lemire. Rec. on App. at 151, ll 18-24. Mr. Lauchbaum was successful in obtaining the pistol from Mr. Lemire. At that point the struggle ended and Mr. Larmand and Mr. Limire left the area. 154, ll 4-14. Mr. Lauchbaum received only a very minor scratch to his hand. Rec. on App. at 159, ll 16-22.

After leaving the scene Mr. Larmand was stopped by William Watson of the Rock Hill Police Department. Mr. Lemire was arrested that night for presenting and pointing a firearm. Mr. Larmand was briefly questioned and released. Rec. on App. at 59, ll 1-16. Mr. Larmand was arrested the next day when he came to arrange bail for Mr. Lemire.

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[4] While not relevant to this appeal, the neighbors testimony was frequently somewhat contradictory. For example, Ronald Lee testified he was with everyone else "a couple of hundred feet" away when the scuffle began. Rec. on App. at 192, ll 11-14. Mark Whittington testified the distance was about 1,000 feet. Rec. on App. at 56, ll 10-11. Either way, there was sufficient light for them to see what was happening from either distance.

ARGUMENT

Did the Court of Appeals err in reversing the circuit court's denial of Respondent's directed verdict motion when the state did not present substantial circumstantial evidence that Frank Larmand with Leo Lemire had the premeditated intent to inflict bodily injury upon Ryan Lochbaum?

Standard of Review

The initial question in this appeal should be by what standard does an appellate court review a pure circumstantial evidence case? Does an appellate court use the same standard as a jury and determine if the evidence excludes every reasonable possibility except that of the guilt of the defendant? A pure circumstantial evidence case is different from every other case. A jury has determined every fact the state has proven is correct, but no fact points directly to the guilt of the defendant. An appellate court is not, as under the law it cannot, judging the credibility of the witnesses. In this case, the court of appeals, as this court, agreed that the state witnesses were truthful. If an appellate court finds a jury had two reasonable alternatives and because they choose the one favoring guilt the facts are sufficient to convict, the reasonable doubt standard is deluded. If an appellate court determines that two reasonable alternatives are present, then as a matter of law the case has not been proven beyond a reasonable doubt.

As noted by one author "[I]f two competing propositions are so close that they must be weighed, the possibility of innocence must be reasonable enough to create a reasonable doubt in the mind of a rational juror." Julie Schmidt Chauvin, Comment, *"For It Must Seem Their Guilt": Diluting Reasonable Doubt by Rejecting the Reasonable Hypothesis of Innocence Standard*, 53 LOYOLA L. REV. 217 (2007). Another writer has said:

> In the case of circumstantial evidence, however, the ultimate determination of guilt is based also on inferences from the evidence, and the court is in as good, if not better, position to assess the rationality of these inferences and whether they establish guilt beyond a reasonable doubt. Thus, use of the reasonable hypothesis standard for appellate sufficiency review would preserve the appropriate roles of judge and jury in circumstantial evidence cases.

Irene Merker, Rosenberg, Yale L. Rosenberg, *"Perhaps What Ye Say is Based Only on Conjecture" - - Circumstantial Evidence, Then and Now*, 31 HOUS. L. REV. 1371 (1995)[5]

Minnesota recognizes that appellate courts should review a circumstantial evidence case under the same "to the exclusion of any other reasonable hypothesis standard" that is given to the jury. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) ("This heightened scrutiny requires us to consider 'whether the reasonable inferences that can be drawn from the circumstances proved support a rational hypothesis other than guilt.'") The Respondent contends that this is the proper standard of review for this court, but even under a lesser standard, the judgment of the Court of Appeals should be affirmed. A heightened standard of review is important in a true circumstantial evidence case because such a case is the only type of case tried in our judicial system in which everyone can tell the truth and an innocent person be convicted. Cross examination may be useful in discrediting a lying or mistaken witness. However, cross examination frequently will not impeach the truthful witness in a circumstantial evidence case.

This Court and the South Carolina Court of Appeals have on numerous occasions, said "If there is any direct evidence or any *substantial* circumstantial evidence reasonably

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[5] On pages 1413 to 1422 this article discusses the various standards used in the state and federal courts when an appellate court reviews a circumstantial evidence case. Arguably footnote 2 of *State v. Hernandez*, 677 S.E.2d 603, 382 S.C. 620 (2009) supports the proposition that South Carolina uses a to the exclusion of any other reasonable hypothesis standard.

tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." *State v. Cherry*, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004)(emphasis added); *See, also*, *Jackson v. Virginia,* 443 U.S. 307 (1979); *State v. James*, 362 S.C. 557, 561, 608 S.E.2d 455, 457 (Ct. App. 2004); *State v. Odems,* 395 S.C. 582, 720 S.E.2d 48 (2011); *State v. Lollis,* 343 S.C. 580, 541 S.E.2d 254 (2001); *State v. Martin*, 343 S.C. 580, 541 S.E.2d 254 (2000); *State v. Gilliand,* 402 S.C. 389 741 S.E.2d 521 (Ct. App. 2012); *State v. Meggett,* 398 S.C. 516, 728 S.E.2d 492 (Ct. App. 2012).[6] The standard of review is not is there *some* circumstantial evidence that could be interpreted to be evidence of guilt. Nor is it to say that if one interpretation of the facts is consistent with guilt the verdict is to be sustained. To say a theory of guilt is possible is not substantial circumstantial evidence nor proof beyond a reasonable doubt. Concerning a review of a circumstantial evidence case, the Arkansas Supreme Court said " In reviewing a challenge to the sufficiency of the evidence, we determine whether the verdict is supported by substantial evidence, direct or circumstantial. Substantial evidence is that evidence which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without resorting to speculation or conjecture. *Campbell v. State*, 2009 Ark. 540, 354 S.W.3d 41, 44 (2009).

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[6] The South Carolina Court of Appeals in *State v. Cherry,* 348 S.C. 281, 559 S.E.2d 297 (Ct. App. 2001) discussed whether courts in applying the "substantial circumstantial evidence" standard are engaging in the weighing of evidence, which appellate courts are forbidden to do. The United States Supreme Court in *Jackson v. Virginia,* 443 U.S. 307 (1979) specifically rejected the "any evidence" standard in criminal cases. The Court said "But it could not seriously be argued that such a 'modicum' of evidence could by itself rationally support a conviction beyond a reasonable doubt." *Id.* at 320. To the extent that any appellate court determines whether the circumstantial evidence is "substantial" or if the evidence is more than a "modicum" an appellate court will, to some extent, weigh the evidence, notwithstanding the frequent protestations to the contrary.

Argument

As to circumstantial evidence this Court has said "'Suspicion' implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." *State v. Lollis*, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001). This Court has further said circumstantial evidence is sufficient to convict when " the circumstances proven are consistent with each other, and when taken together, point conclusively to the guilt of Appellant to the exclusion of every other reasonable hypothesis." *State v. Daniels,* 401 S.C. 251, ___, 737 S.E.2d 473 (2012). This Court has further said "It is not sufficient that they create a probability, though a strong one . . . ." *State v. Schrock,* 283 S.C. 129, 133, 322 S.E.2d 450, 452 (1984).

In *State v. Arnold,* 361 S.C. 386, 605 S.E.2d 529 (2004) this Court upheld a Court of Appeals decision which reversed the murder conviction of the defendant. The facts were that the defendant knew the victim and had been involved in a sexual relationship with the victim, the victim was shot and the defendant had been seen possessing a firearm, the car used by the deceased was found about ten miles from where the defendant was living and a coffee cup lid found in the car contained the fingerprint of the defendant. This Court held those facts did not raise a substantial circumstantial evidence case that could be submitted to the jury.

As lynching is in essence a conspiracy, what this Court has to say about proving a conspiracy is also relevant to lynching. This Court has said "Thus, we focus here on the sufficiency of the evidence of an *agreement* between the alleged conspirators, and not, as the State would have us do, on the alleged common *object,* that is, the importation and distribution of Dilaudid in a defined geographic area." *State v. Gunn* 313 S.C. 124, 134, 437 S.E.2d 75, 80

(1993) (emphasis in original) This is the standard against which the circumstantial evidence in this case must be viewed.

Here the state is urging this Court to focus upon the fact that Ryan Lochbaum was in fact attacked and not the proof of an agreement to attack Mr. Lochbaum. The evidence presented by the state only proved that Mr. Lochbaum was attacked by Mr. Lemire. The evidence did not prove an agreement between Mr. Larmand and Mr. Lemire. The Court of Appeals has held "[T]o sustain a conviction for lynching the State must produce at least some evidence of premeditation." *State v. Smith*, 352 S.C. 133, 137, 572 S.E.2d 473, 475 (Ct. App. 2002). The proof of premeditation must be more than speculation or conjecture. The Petitoner has not shown any proof of premeditation that is more than speculation or conjecture. They may have shown that a premeditated agreement is a possibility, but that is not sufficient to sustain the conviction. The Respondent urges that from the fact both defendants came to the scene together, the jury could assume there was premeditation and planning to assault Mr. Lochbaum. But just as likely, the two defendants arrived at the scene together so Mr. Larmand could speak with Mr. Lochbaum and Mr. Lermire was acting on his own when he attacked Mr. Lochbaum. In fact, considering that Mr. Larmand never attempted to get Mr. Lochbaum by himself and away from others, the latter version is more likely. The state has produced no evidence which makes a guilty explanation substantially more likely than the innocent explanation. For that reason, the state has failed in its proof. The question is not may a guilty explanation be inferred from the facts, but rather has the state proven that a guilty explanation is more likely to the extent that a reviewing court can conclude the guilty explanation is substantially more likely.

In *State v. Hernandez,* 677 S.E.2d 603, 382 S.C. 620 (2009) this Court said

"The State claims that it is "nonsensical" to find that the Thunderbird occupants did not know Petitioners prior to this transaction. However, the State failed to present any evidence such as acts, declarations, or specific conduct to support this inference, and thus, we find that the conclusion that Petitioners knew the Thunderbird occupants and therefore had knowledge of the drugs in the tractor trailer is mere speculation." *Id.* at 625, 677 S.E.2d at 605. The same principles apply in this case. The state merely assumes an attack was planned without any proof of such a plan.

The Court of Appeals did not, as the Respondent contends, ignore the evidence of the state, but rather simply acknowledged that the evidence of the state simply put the two defendants at the same place at the same time. In *Hernandez* this Court further held, "[T]he State failed to present any evidence such as acts, declarations, or specific conduct to support this inference [knowledge], and thus, we find that the conclusion that Petitioners knew the Thunderbird occupants and therefore had knowledge of the drugs in the tractor trailer is mere speculation." *Id.* at 625, 677 S.E.2d at 605. This Court did not consider the specific conduct of being at the same place at the same time sufficient to prove knowledge of the drugs even though the defendant followed the tractor trailer down a secluded road. Mr. Hernandez well could have been guilty, but that was not sufficient to sustain the conviction. The same principle is applicable here. Under the prior definition of lynching, as well as the current law, the State is required to prove premeditation. The premeditation required is to have the intent to commit an act of violence upon another person. S. C. Code § 16-3-230. The premeditation has to be formed before the alleged attack.

The Petitioner argues "The effect of the Court of Appeals' analysis is that unless

the State can produce evidence of actual discussions between co-conspirators while planning the crime, a defendant's testimony (after the State rests its case-in -chief) that he never conspired with his co-defendants and never intended to commit a crime, will mandate a directed verdict on any charge requiring an agreement, premeditation and intent to commit a crime." Br. of Pet. at 24. This is not the position of the Respondent. The Respondent contends that if the state fails to produce evidence of an agreement by either direct or substantial circumstantial evidence, then a defendant is entitled to a directed verdict. The testimony of the defendant is not relevant to that determination. *See, State v. Hepburn*, 406 S.C. 416, 753 S.E.2d 402 (2013).[7]

In the present case no action or statement of Mr. Larmand indicated any intent to assault or strike Mr. Lochbaum as part of a conspiracy with Mr. Lermire. The wearing of dark clothes is no more an indication of a conspiracy than it is of the fact that the clothing is their work clothes. The state produced no evidence the clothing was not their normal work clothes. The state produced no testimony to make a guilty inference from the facts indicating guilt was more likely than an innocent explanation of the facts. When Mr. Larmand approached Mr. Lochbaum, there was no attempt on Mr. Larmand's part to separate Mr. Lochbaum from his friends. The suggestion that his friends leave was made by Mr. Lochbaum. Mr. Larmand and Mr. Lochbaum then moved to an area toward a more populated, lit area as opposed to the area where there were no houses and was darker. Mr. Larmand did not take Mr. Lochbaum to a place where Mr. Lermire was hiding. This certainly does not make a planned attacked upon Mr.

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[7] On the issue of a directed verdict, the question of whether the jury believed the testimony of the defendant is simply not relevant to this case or any case. *Hepburn* establishes that the trial judge must look at the evidence at the end of the state's case. A jury's disbelief of a defendant's testimony simply cannot supply the absence of evidence in the state's case.

Lochbaum more likely than not. When Mr. Lermire said "This is what you get for f***ing with *my* family," this is an indiction of Mr. Lermire's attitude and intent and not Mr. Larmand's. At no time did the state offer any evidence of any statement by Mr. Larmand that would even suggest any planning in the incident.

The Respondent argues that a reasonable inference from the State's evidence is that there was a premeditated plan to attack Mr. Lochbaum. Brief of Pet. at 21. The state, however, has not shown what facts, other than they traveled together to Rock Hill, to support that conclusion. Under the facts of this case, a guilty explanation is not substantially more likely than an innocent explanation. When the state fails to give a jury a rational basis for rejecting an innocent explanation of the circumstantial evidence, then the state has not met its burden of proof. A jury should not be required to guess between two equal conclusions from the circumstantial evidence produced. Such proof is not proof of substantial circumstantial evidence.

The State argues that because Mr. Larmand parked some distance away he planned on attacking Mr. Lochbaum. First, according to the scale of the map used as an exhibit, the distance is slightly over 1,089 feet.[8] The car was parked at the end of the road in the vicinity of several houses from which people could observe and describe the car. After the alleged attack, they would both have to go over 1,000 feet to the automobile. The logic of placing a "get away" car so far from the scene of the alleged planned attack simply does not support an inference that the attack was planned by both Mr. Larmand and Mr. Lemire.

The State further argues that the fact that Mr. Larmand and Mr. Lemire fled the

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[8] This Court took judicial notice of the distance between Gary, TN and Johnson City, TN in *State v. Arnold*, 361 S.C. 386, 605 S.E.2d 529 (2004), n. 3.

scene in also evidence of their guilt. In *State v. Grant*, 275 S.C.404, 272 S.E.2d 169 (1980) this Court said "evidence of flight tends to be only marginally probative as to the ultimate issue of guilt or innocence." *Id.* at 408, 272 S.E.2d at 171. Under the facts of this case evidence of flight is even less than marginal. After the fight the firearm Mr. Lemire possessed was in the hands of Mr. Lochbaum. Both Mr. Larmand and Mr. Lemire had been in a altercation with several individuals. They were out numbered. Mr. Jessie Harris testified that someone, he thought Mr. Lochbaum, told Mr. Larmand and Mr. Lemire to leave. Rec. on App. at 123, ll 18-25. They quickly left the scene. When the officer turned on his blue light, Mr. Larmand stopped his automobile and did not try to evade the police. Rec. on App. At 57, ll24-25 to 58, ll 1-3. Apparently Mr. Larmand was not even given a ticket for speeding. Rec. on App. at 59, ll 1-13.

Mr. Lemire testified that he was told to remain in the car. Rec. on App. at 463, ll 15-20. He did not leave the truck until after he heard a loud argument. Rec. on App. at 466, ll 13-16. He testified that his leaving the truck was not part of any plan or scheme.

The State has argued that the Court of Appeals has ruled "that the State's case failed because there was no testimonial evidence of an express agreement between Respondent and Co–Defendant to attack and injure the victim." Pet. For Cert. at 21. What the Court of Appeals has ruled is simply a correct statement of the law that the state is required to produce direct evidence or substantial circumstantial evidence of a premeditated agreement by Mr. Larmand and Mr. Lemire to assault Mr. Lochbaum. Under the facts of this case there is simply no substantial circumstantial evidence that Mr. Larmand with Mr. Lemire planned any attack on Mr. Lochbaum. The facts are simply not sufficient to convict Mr. Larmand of the crimes for which he was convicted..

"Substantial circumstantial evidence" is more than one of two possible conclusions from the evidence. The phrase certainly means more than a 50/50 chance. If the phrase is to have any meaning, it must mean that the state is required to produce evidence that makes guilt substantially more likely than not from the circumstantial evidence presented. Such a rule is rational and logical. A possible or probable conclusion from a circumstantial evidence case is not proof beyond a reasonable doubt.

This Court has recently approved a jury instruction that provides " [T]o the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed." *State v. Logan*, 405 S.C. 83, 99, 747 S.E.2d 444, 452 (2013).[9] Against this standard, the state has simply failed to point to any evidence that points conclusively to the guilt of Mr. Larmand. A possible, or even probable, conclusion from the facts is not sufficient to convict. The state must show at the very least that the circumstantial facts must create a substantial probability of the guilt of the defendant. The State has not shown what facts in this case establish a substantial probability to the exclusion of every other reasonable hypophysis that Mr. Larmand is guilty of a premeditated attack upon Mr. Lochbaum.

Remedy

In the event this Court reverses the South Carolina Court of Appeals decision, this matter should be remanded to the *en banc* panel of the Court of Appeals to consider and decide the issues not ruled upon in the initial decision.

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[9] In this case no circumstantial evidence charge was given.

CONCLUSION

In this case the state failed to produce substantial circumstantial evidence Mr. Francis Larmand had any premeditated agreement with Mr. Leo Lermire to go to the residence of Ryan Lochbaum and commit the crime of lynching. Without proof of a premeditated agreement, no proof of the crime of lynching or conspiracy exists. The decision of the Court of Appeals should be affirmed.

August 18, 2014

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM YORK COUNTY
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Honorable William H. Seals, Jr.., Circuit Court Judge

Appellate Case No. 2013-001143

The State ..... Petitioner,

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AFFIDAVIT OF SERVICE

PERSONALLY appeared before me Sandy Traynham who, after being duly sworn, deposes and says that she is the secretary for C. Rauch Wise, Attorney for the Respondent in the above entitled case. That on August 19, 2014, she did deposit in the United States Mail with proper postage affixed thereto, three copies of the Return to Petition for Writ of Certiorari in the above case addressed to Deborah R.J. Shupe, Office of the Attorney General, P.O. Box 115549, Columbia, SC, 29211.

Sandy Traynham

SWORN to and Subscribed
before me this 19 day
of August, 2014.

Mary Jane Hartin (L.S.)
Notary Public for South Carolina
My Commission expires: 11/30/22