

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to Spartanburg County

John C. Hayes, III, Circuit Court Judge

---

Opinion No. 5234 (S.C. Ct. App. filed 5/28/2014)

11-GS-42-01061-01063

---

**RECEIVED**

AUG 28 2014

**S.C. Supreme Court**

THE STATE,

PETITIONER,

V.

KEVIN TYRONE BENNETT,

RESPONDENT

APPELLATE CASE NO. 2014-001544

---

RETURN TO PETITION FOR WRIT OF CERTIORARI  
TO THE COURT OF APPEALS

---

DAVID ALEXANDER  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1343

ATTORNEY FOR RESPONDENT.

# INDEX

|                                    |   |
|------------------------------------|---|
| INDEX.....                         | 1 |
| QUESTION PRESENTED .....           | 2 |
| ALTERNATE QUESTION PRESENTED ..... | 2 |
| STATEMENT OF THE CASE.....         | 3 |
| ARGUMENT .....                     | 4 |
| CONCLUSION .....                   | 8 |

QUESTION PRESENTED BY THE STATE

The trial court did not err in denying the motion for directed verdict on the charge of burglary and the Court of Appeals errantly relied on its own alternate hypothesis in contradiction to established federal and state precedent that indicates a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.

ALTERNATE QUESTION PRESENTED

Whether the Court of Appeals correctly reversed respondent's burglary conviction because the State only proved that respondent was present at a public place where a crime occurred, which did not amount to substantial circumstantial evidence of his guilt?

## STATEMENT OF THE CASE

In February 2011, Kevin Bennett (“Bennett”) was indicted for burglary of a building, second degree; petit larceny; and malicious injury to real property causing less than \$2,000.00 worth of damage. R.142. On January 24 - 25, 2012, Bennett was tried in Spartanburg County before the Honorable John C. Hayes, III and a jury. R. 1. Beverly Jones represented Bennett. R. 1. Dan Cude represented the State. R. 1. The jury found Bennett guilty on all three charges. R. 138, l. 19 – 139, l. 6. Judge Hayes sentenced Bennett to ten years’ imprisonment on each conviction, to run concurrently. R. 141, ll. 8 - 14.

A panel of the Court of Appeals consisting of Judges Huff, Geathers, and Lockemy heard oral argument on December 12, 2013. App. 182. On May 28, 2014, the court reversed Bennett’s conviction. App. 182. State v. Bennett, 408 S.C. 302, 758 S.E.2d 743 (Ct. App. 2014). After the State’s petition for rehearing was denied, it petitioned this Court for certiorari.

## ARGUMENT

The Court of Appeals correctly reversed respondent's burglary conviction because the State only proved that respondent was present at a public place where a crime occurred, which did not amount to substantial circumstantial evidence of his guilt.

No reasons exist for granting certiorari in this case. Rule 242(b), SCACR. The State does not contend that a novel question of law exists. Rule 242(b)(1), SCACR. The Court of Appeals' opinion was unanimous. Rule 242(b)(2), SCACR. The State has not pointed to any constitutional questions. Rule 242(b)(4), SCACR.

In its issue statement, petitioner attempts to manufacture an issue for this Court by claiming that the Court of Appeals' decision is in conflict with this Court's decisions and the decisions of the United States Supreme Court. Rule 242(b)(3) and (5), SCACR. The State claims that the Court of Appeals erred by requiring the State to exclude every other reasonable hypothesis. This claim ignores what the Court of Appeals **actually said in its opinion**. The Court of Appeals, citing State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004), stated, "The trial court is not, however, required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis." App. 185. The Court of Appeals cited and applied the exact standard the State now claims that it failed to use. Therefore, no real conflict exists under either Rule 242(b)(3) or (b)(5) and no reasons listed in Rule 242 exist for granting certiorari in this case.

The Court of Appeals' opinion simply applies settled law. The court correctly recognized, and the State does not dispute, that the evidence against Bennett was wholly circumstantial. The opinion cited recent decisions from this Court restating the established precedent that the State must produce "substantial circumstantial evidence" beyond a mere

suspicion of guilt. App. 185, citing State v. Cope, 405 S.C. 317, 348, 748 S.E.2d 194, 210 (2013) and State v. Hernandez, 382 S.C. 620, 625, 677 S.E.2d 603, 605 (2009). No error exists in the standard the court used to decide the case.

Put simply, the State contends the Court of Appeals erred in concluding that substantial circumstantial evidence of Bennett's guilt did not exist. It is now uncontroverted that the only two pieces of evidence against Bennett were his fingerprint on the side of a television set in a public, unlocked room and two small blood droplets in a public computer room that Bennett frequently used. Pet. Cert. 7. App. 185. In an attempt to manufacture an issue for this Court, the State does not dispute the court's assessment of what evidence existed, but argues that the Court of Appeals "errantly weighed the evidence." Pet. Cert. 7. If this case contained any direct evidence of Bennett's guilt, then perhaps the State's argument would not be spurious. However, since it is conceded that only circumstantial evidence exists, what the State claims is "weighing" the evidence is only the court following this Court's precedent to determine whether the evidence was substantial.

"Weighing" the evidence implies making some credibility judgment or drawing an inference that is not supported by the evidence. The Court of Appeals did neither. The facts stated in the opinion were not subject to being "weighed." The court noted the undisputed fact that Bennett was frequently in the computer room, a place where he had a right to be. App. 185. The court noted that the room containing the television where his fingerprint was found was not always locked, not always monitored, and was the location for meetings for support groups and addiction groups after the State's only witness left for the day. App. 184.

It was undisputed that the community center was open to the public from 6:00 am to 9:00 pm Monday through Friday and also on the weekends. R. 42, ll. 3 – 23. Bennett had been in the community center several times before the crime. R. 45, ll. 19 – 24. The doors to the room where Bennett’s fingerprint was found on the television—the “community room”—were not always locked and events were frequently scheduled in that room. R. 44, ll. 16 – 25. Additional fingerprints were found on the television that were “insufficient” for comparison. R. 16, ll. 20 – 23. The police did not try to lift any fingerprints from the other television in the community room. R. 20, l. 20 – 21, l. 12.

The first policeman on the scene (who found the fingerprint) also looked for evidence in the computer room. R. 25, ll. 7 – 23. He did not notice any blood. R. 25, ll. 7 – 23. The officer charged with processing the computer room for evidence conducted an extensive examination, but did not notice any blood. R. 37, ll. 11 – 20. It was not until after 9:30 the next morning—six hours after the crime—that an officer with Spartanburg’s burglary task force examined the community center that “two small droplets of blood” were found two inches below the mount for the television in the computer room. R. 56, ll. 2 – 17. This officer did not find any blood at the entry point where glass had been broken. R. 55, ll. 6 – 14. Two or three employees of the community center were already at work when the blood spots were found. R. 61, ll. 20 – 21.

The Court of Appeals' conclusion is powerful in its simplicity:

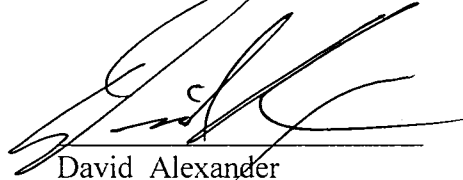
The evidence undoubtedly placed Bennett at the *location where a crime ultimately occurred*; however, it is undisputed that Bennett was a frequent visitor to the location prior to the crime and we disagree with the State's assertion that the evidence placed Bennett *at the scene of the crime*.

App. 186 (emphasis in original). Based on established precedent from this Court, the Court of Appeals correctly concluded that the evidence against Bennett amounted to, at most, a mere suspicion of guilt, which required reversal. App. 186, citing State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011). See also United States v. Strayhorn, 743 F.3d 917, 921-23 (4<sup>th</sup> Cir. 2014) (reversing for failure to grant a directed verdict in a robbery case and discussing the import of fingerprint evidence). This Court should deny certiorari and allow the Court of Appeals' decision to stand.

CONCLUSION

The Court of Appeals' opinion contains no errors and the State has shown no reasons for granting certiorari. This Court should deny the State's petition.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander  
Appellate Defender

ATTORNEY FOR RESPONDENT.

This 28th day of August, 2014

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to Spartanburg County

John C. Hayes, III, Circuit Court Judge

---

Opinion No. 5234 (S.C. Ct. App. filed 5/28/2014)  
11-GS-42-01061-01063

---

THE STATE,

PETITIONER,

V.

KEVIN TYRONE BENNETT,

RESPONDENT

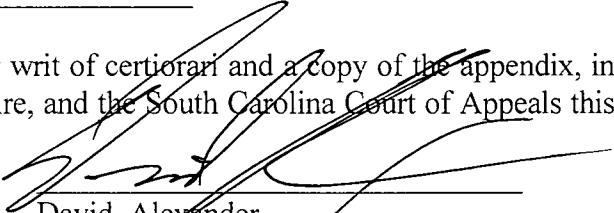
APPELLATE CASE NO. 2014-001544

---

CERTIFICATE OF SERVICE

---

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix, in this case has been served on David Spencer, Esquire, and the South Carolina Court of Appeals this 28th day of August, 2014.



---

David Alexander  
Appellate Defender

ATTORNEY FOR RESPONDENT

SWORN TO BEFORE ME this 28th day  
of August, 2014.

Marie Hunter (L.S.)  
Notary Public for South Carolina  
My Commission Expires: