STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From York County
The Honorable William H. Seals, Jr., Circuit Court Judge
On Writ of Certiorari to the Court of Appeals
Appellate Case No. 2013-001143

THE STATE,

Petitioner,

vs.

FRANCIS LARMAND,

Respondent.

REPLY BRIEF OF PETITIONER

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A. Standard of Appellate Review

Respondent asserts this Court should use a "to the exclusion of any other reasonable hypothesis" standard of review regarding directed verdict, citing law review articles and case law from Minnesota as support for the assertion. Noticably absent from Respondent's argument, however, is any meaningful discussion of South Carolina case law directly on point, and clearly contrary to his assertion.

In ruling on a directed verdict motion, "'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, 606 S.E.2d 475, 478 [2004]) (emphasis added); State v. Bennett, 408 S.C. 302, 758 S.E.2d 743, 745 (Ct. App. 2014) (same). Thus, as recently as May 2014 (Bennett), South Carolina appellate courts have rejected Respondent's position.

If Respondent's argument is accepted, it will effectively render the jury system meaningless. All a defendant need do is present an alternate interpretation of the evidence, and the trial court will be mandated to take the case from the jury and direct a verdict for the defendant. In essence, all trials will become bench trials, and juries will be eliminated from the process.

Jury trials are a cornerstone of our criminal justice system, and cases should be removed from the jury's consideration only when there is **no** evidentiary basis to support a finding of guilt. If there are alternative theories of the evidence, deciding which theory to accept is, and should remain, a jury function.

B. The Evidence and Reasonable Inferences

Respondent asserts the Court of Appeals applied the appropriate standard, and properly determined the State failed to present sufficient evidence to warrant submitting the case to the jury. His entire argument is premised on his contention the State's case was "[a] pure circumstantial case." (Brief of Respondent, p. 6).

Contrary to Respondent's contention, the State presented **direct** evidence of Respondent's actions leading up to and following the attack on Lochbaum. The **only** circumstantial component of the State's case was the element of intent/premeditation, which almost always requires circumstantial proof. As discussed in the Brief of Petitioner, the direct evidence of the circumstances provided substantial circumstantial evidence of Respondent's and his Co-Defendant's intent that night.[1] (Brief of Petitioner, pp. 18-21). Notably, in denying Respondent's directed verdict motion, the circuit court stated: "[c]learly, this is an issue for the jury to decide." (R. Vol. I, p. 266).

The State's evidence did far more than simply put Respondent and the Co-Defendant in the same place at the same time. Rather, it established the purpose of their trip from North Carolina to Rock Hill was to deal with Lochbaum, and when the effort to lure him to Knights Stadium failed, they drove to his home in the middle of the night. Respondent parked his vehicle where it could not be seen from Lochbaum's house, and walked back to the house to confront him. While he had Lochbaum distracted, Co-

[1]In response to Respondent's version of the evidence, the State craves reference to the Record on Appeal. At best, Respondent's assertions regarding the facts established by the evidence reveal exactly why the circuit court properly submitted the case to the jury.

Defendant came through the dark, approached Lochbaum while pointing a very large, cocked gun at him, and made it clear he believed Lochbaum was "f***ing" with his family. Even ignoring the attempt to lure Lochbaum to Knights Stadium, it is certainly inferable from the undisputed evidence regarding the circumstances preceding and during the attack that Respondent and Co-Defendant planned to attack Lochbaum after they realized he might be outside. *See* State v. Barksdale, 311 S.C. 210, 428 S.E.2d 500, 501 (Ct. App. 1993) ("[T]o constitute a mob under the statute the assemblage need not have formed with the premeditated purpose and intent of committing an act of violence upon the person of another, but the requisite purpose and intent may be formed after the participants are assembled[.]").

Whether Co-Defendant's reference to "my family" when he approached Lochbaum with a cocked gun indicated he was acting without Respondent's knowledge, or he was acting as part of a premeditated attack on Lochbaum because they believed he was stealing Pop-A-Lock's business, was a quintessential question of fact for the jury's determination. *See* State v. Tuckness, 257 S.C. 295, 185 S.E.2d 607, 608 (1971) ("The question of criminal intent with which an act is done is one of fact and **is ordinarily for jury determination except in extreme cases** where there is no evidence thereon.") (emphasis added). The jury was present in the courtroom and able to observe the witnesses' credibility, and by rendering guilty verdicts, it clearly determined Respondent and Co-Defendant **did** premeditate the attack.

The Court of Appeals improperly weighed the evidence, essentially ignored the State's evidence, decided Respondent and Co-Defendant were credible, and then

substituted its judgment for the jury's verdict based on their testimony alone.[2] That analysis is contrary to, and represents a dangerous departure from, well-established South Carolina law regarding appellate review of directed verdict motions. Accordingly, the Court of Appeals opinion should be reversed.[3]

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[2]By way of footnote, Respondent acknowledges the standard of appellate review prohibits weighing the evidence, but contends appellate courts actually do weigh the evidence in spite of that well-established prohibition. (Brief of Respondent, p. 8, n. 6). Absent a change in the long-standing standard of review from directed verdict motions, the appellate courts may not weigh the evidence in determining if there was evidence to support the circuit court's ruling. State v. Brown, 402 S.C. 119, 740 S.E.2d 493, 495 (2013) (in reviewing the denial of a directed verdict motion, the appellate court is bound by the trial court's factual findings absent clear error); State v. Gaines, 380 S.C. 23, 667 S.E.2d 728, 732-33 (2008) (when ruling on a directed verdict motion, the trial court considered the existence or nonexistence of evidence, not its weight). Respondent asks this Court to use a broader analysis in determining whether the trial court erred that is beyond what the trial court is even allowed to consider in making its ruling.

[3]In the event this Court reverses the Court of Appeals *en banc* opinion, Respondent asserts the case should be remanded to the *en banc* Court of Appeals for rulings on the remaining issues he raised on appeal. In its Petition for Writ of Certiorari, the State relied on its Final Brief of Respondent as to those issues, and indicated it would provide further briefing as required by this Court, but remand was not warranted. Respondent did not address those issues in his Return, or even incorporate the arguments he made in the Court of Appeals on them, and he made no request for remand. This Court did not reference those issues in the Order granting certiorari, so arguably they are not before the Court. Even if they are before the Court, however, the State submits the record is sufficient for this Court to rule on them without remand to the Court of Appeals.

CONCLUSION

Based on the foregoing, Petitioner submits the Court of Appeals decision should be reversed, and Respondent's convictions and sentences reinstated.

Respectfully submitted,

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August 28, 2014

Columbia, SC

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CERTIFICATE OF SERVICE

I, Sally B. Ellison, hereby certify I served the Reply Brief of Petitioner on Respondent by placing three copies in the United States Mail Service, postage pre-paid, addressed as follows:

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

This 28th day of August, 2014.

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