STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM CLARENDON COUNTY
R. Ferrell Cothran, Jr., Circuit Court Judge
Appellate Case No. 2012-212430

THE STATE,

Respondent,

v.

MICHAEL WILSON PEARSON,

Appellant.

RESPONDENT'S PETITION FOR REHEARING

On July 30, 2014, this Court issued a published opinion in which it reversed Appellant Michael Wilson Pearson's convictions for first-degree burglary, armed robbery, grand larceny, kidnapping, and possession of a weapon during the commission of a violent crime. State v. Pearson, Op. No. 5251 (S.C. Ct. App. filed July 30, 2014) (Shearouse Adv. Sh. No. 30 at 33). Respondent (the State) petitioned for rehearing on August 12, 2014. This Court granted the petition for rehearing on October 8, 2014, and issued State v. Pearson, Op. No. 5251 (S.C. Ct. App. withdrawn, substituted and refiled October 8, 2014) (Shearouse Adv. Sh. No. 40 at 38). In the opinion, this Court found the trial judge erred in denying Appellant's motion for a directed verdict after concluding the State failed to present substantial circumstantial evidence of Appellant's involvement in any of the crimes charged. This Court effectively weighed the evidence, usurped the jury's authority, and overturned the jury's verdict. Pursuant to Rule 221(a), SCACR, the

State respectfully submits this Court misapprehended or overlooked several critical points—particularly in respect to the standard of review for the denial of a motion for a directed verdict—and petitions this Court for rehearing.

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). When reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State. Id. An appellate court **must** find a case is properly submitted to the jury if any direct evidence or any substantial circumstantial evidence reasonably tends to prove the guilt of the accused. Id. at 292-93, 625 S.E.2d at 648 (emphasis added). An appellate court may reverse a trial court's denial of a motion for a directed verdict if there is no evidence to support the trial court's ruling or if the ruling is based on an error of law. State v. Dantonio, 376 S.C. 594, 603, 658 S.E.2d 337, 342 (Ct. App. 2008). "[U]nless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986).

Our Supreme Court has explained that a trial court 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, 594, 606 S.E.2d 475, 478 (2004). In contradiction to Cherry's holding, this Court based its opinion on the mere possibility of an alternate hypothesis. The Court found that because "there was testimony that [Victim] regularly parked his vehicle in a public lot adjacent to his store" and Appellant "assisted with a five-day landscaping project at [Victim's] residence," Appellant "**may** have had an opportunity to come in

contact with the vehicle before the crimes occurred." Pearson at 45 (emphasis added). Regardless of whether this alternate hypothesis was reasonable or fantastical, the State's evidence did not need to exclude this alternate hypothesis in order for this case to be properly presented to the jury.

Ultimately, the question is whether, in view of the evidence in the light most favorable to the State, **a rational trier of fact** could find all the elements beyond a reasonable doubt. See State v. Robinson, 310 S.C. 535, 539, 426 S.E.2d 317, 318 (1992) (finding any rational trier of fact could have found all the elements of the crime beyond a reasonable doubt in affirming the denial of a motion for directed verdict and citing Jackson v. Virginia, 443 U.S. 307 (1979)).

The United States Supreme Court noted the following:

> [T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. . . . This familiar standard gives full play to **the responsibility of the trier of fact** fairly to resolve conflicts in the testimony, **to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.**

Jackson, 443 U.S. at 319 (emphasis added). Notably, the United Stated Supreme Court recognized the responsibility to weigh the evidence falls exclusively to the jury, not the trial judge and not the appellate court.

Our Supreme Court recently articulated the following concerning the standard of review:

> The trial court should grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty as suspicion implies a belief or opinion as to the guilt based upon facts or circumstances which do not amount to proof. On the other hand, **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, 429, 753 S.E.2d 402, 409 (2013) (quoting Cherry, 361 S.C. at 594, 606 S.E.2d at 478 (emphasis added) (citations & internal quotation marks omitted)). This is consistent with the United States Supreme Court's observation concerning circumstantial evidence:

> Admittedly, circumstantial evidence may in some cases point to a wholly incorrect result. Yet this is equally true of testimonial evidence. In both instances, **a jury is asked to weigh** the chances that the evidence correctly points to guilt against the possibility of inaccuracy or ambiguous inference. In both, the jury must use its experience with people and events in weighing the probabilities. If the jury is convinced beyond a reasonable doubt, we can require no more.

Holland v. United States, 348 U.S. 121, 137-38 (1955) (emphasis added) *cited with approval in* Jackson, 443 U.S. at 317 n.9.

The problem in the present case is that this Court has required more than what Hepburn, Jackson, and Holland require. This Court indicated Appellant may have come in contact with the vehicle because Victim parked it in a public lot adjacent to his auto parts store and Appellant assisted in a landscaping project at Victim's home. However, Appellant himself vehemently denied coming in contact with the vehicle at any time, whether during the landscaping project (which he denied entirely) or in the public lot at Victim's store. Appellant adamantly stated he had never been in contact with the vehicle and had never been to Victim's place of business. (R. 150, lines 14-17.) The jury was not irrational to conclude the evidence established Appellant's guilt beyond a reasonable doubt. Indeed, this Court's conclusion to the contrary amounts to a requirement that the

State prove guilt to the exclusion of every other reasonable hypothesis—a requirement that is not part of the jurisprudence of this State.

In its opinion, this Court determined there was insufficient evidence tying Appellant to the crimes. This Court recognized the most damaging evidence was Appellant's fingerprint on the rear of Victim's vehicle, where one of Victim's assailants was seen exiting the vehicle. Yet, this Court also found "there was **other evidence** showing [Appellant] may have had an opportunity to come in contact with the vehicle before the crimes occurred." Pearson at 45 (emphasis added). Specifically, this Court stated there was testimony that Victim parked his car in a public lot adjacent to his auto parts store and that Appellant assisted in a landscaping project at Victim's home. However, this logic illustrates the folly of this Court's approach.

Evidence was also presented that the vehicle was parked in the lot beside the store every day Victim was working. Thus, the jury could have concluded it was likely the vehicle was parked at the store while the landscaping project took place at Victim's home, making it impossible for the fingerprint to have been placed during the project. Indeed, when viewed in the light most favorable to the State, this evidence eliminates either one or the other alternative hypothesis conjured by this Court for explaining the fingerprint in a way other than the reasonable explanation the jury concluded was proven beyond a reasonable doubt. The evidence presented during trial—when viewed in the proper context—was substantial circumstantial evidence and was sufficient to allow the charges to be submitted to the jury for resolution. Just because the jury might not have believed the State's evidence that Victim's vehicle was parked at the store every day and may have instead believed the vehicle was at his home during the time Appellant did

landscaping work, this would not be enough to disregard the favorable evidence at the directed verdict stage.

This is particularly true given Appellant's own statement to Investigator Kenneth Clark. Appellant stated that he was not familiar with Victim, had never been around any of his property **or vehicle**, did not know where he lived, and had never been to his house. Therefore, this Court's speculation, that Appellant **may** have had an opportunity to come in contact with the vehicle before the crimes occurred simply because Victim parked his vehicle in a public lot and because Appellant assisted in landscaping work at Victim's house, is in direct contradiction to Appellant's own statement. He denied the landscaping project entirely and adamantly stated he had never been in contact with the vehicle and had never been to Victim's place of business.

This Court also placed emphasis on the fact that the State offered no "timing evidence" to contradict reasonable explanations for the presence of the fingerprint, thus forcing the jury to have to guess whether the fingerprint was made at the time of the crimes. In State v. Rogers, 405 S.C. 554, 568, 748 S.E.2d 265, 273 (Ct. App. 2013), this Court stated "a directed verdict is not required merely because the State cannot conclusively show the defendant was at the crime scene at the relevant time." This Court cited the Supreme Court's finding in State v. Frazier, 386 S.C. 526, 532, 689 S.E.2d 610, 613 (2010), that "the holdings in Arnold, Martin, and Schrock did not alter or increase 'the sufficiency of evidence standard a trial court is to apply in a case based on circumstantial evidence.'" Id. "The [Frazier] court explained this is because those holdings were based on the State's failure to present *any* evidence placing the defendant at the scene, not the State's inability to provide conclusive proof on that point." Id. at

568-69, 748 S.E.2d at 273. While the State did not conclusively prove Appellant's fingerprint placed him at the scene of the crimes at the time the crimes were committed, it did conclusively prove he touched the vehicle by introducing fingerprint evidence matching him to the print found on the rear quarter of the vehicle. Combined with Victim's testimony that one assailant rode in the back of the El Camino where the fingerprint was found, and Appellant's own statement that he had never come in contact with the vehicle, this was certainly not a failure to present *any* evidence as in the above cases. Thus, sufficient evidence existed to submit the case to the jury.

It is apparent this Court engaged in speculation and weighed the evidence of the fingerprint, rather than simply considering its existence, to determine whether it reached the level of substantial circumstantial evidence. This Court emphasized the existence of other "reasonable explanations for the presence of the fingerprint," thus concluding the jury could only guess whether the fingerprint was made at the time of the crimes. This conflates the standard of review for directed verdict with the standard jury charges for direct and circumstantial evidence.

Over fifty years ago, in State v. Littlejohn, 228 S.C. 324, 328, 89 S.E.2d 924, 926 (1955), the South Carolina Supreme Court addressed the distinction between a trial judge's consideration of circumstantial evidence at the directed verdict stage of a trial and a jury's consideration of circumstantial evidence during deliberations. By comparison, regarding the jury's consideration of circumstantial evidence, the Court instructed:

> [I]t is necessary that every circumstance relied upon by the state be proven beyond a reasonable doubt; and that all of the circumstances so proven be consistent with each other and, taken together, point conclusively to the guilt of the accused **to the exclusion of every other reasonable hypothesis**. It is not sufficient that they create a

> probability, though a strong one; and if, assuming them to be true, they may be accounted for upon any reasonable hypothesis which does not include the guilt of the accused, the proof has failed.

Id. (emphasis added). Regarding the trial judge's consideration of circumstantial evidence at the directed verdict stage, the Court explained:

> But on a motion for direction of verdict, the trial judge is concerned with the existence or non-existence of evidence, not with its weight; and, although he should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is **his duty to submit the case to the jury** if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.

Id. at 329, 89 S.E.2d at 926 (emphasis added).

As explained by the Littlejohn Court: "It must be remembered . . . that there is one test by which circumstantial evidence is to be measured by the jury in its deliberations, and quite another by which it is to be measured by the trial judge in his consideration of the accused's motion for a directed verdict." Id. at 328, 89 S.E.2d at 926. Indeed, the more stringent test by which circumstantial evidence is to be measured by the jury is illustrated by the modified circumstantial evidence charge recently approved by this Court, which provides:

> There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.
>
> Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence, however, **to 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.**
>
> The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.

State v. Logan, 405 S.C. 83, 99, 747 S.E.2d 444, 452 (2013) (emphasis added). A similarly stringent standard, and one nearly identical to South Carolina's previously abandoned circumstantial evidence requirement that "all of the circumstances so proven be consistent with each other and, taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis,"[1] is set forth by statute in our sister state of Georgia.[2] Yet, even under this strict test by which the jury must measure circumstantial evidence, the Georgia Court of Appeals has held: "It is not necessary that circumstantial evidence exclude every other hypothesis except that of guilt, but, rather, only reasonable inferences and hypotheses, and **it is for jury to decide whether all reasonable hypotheses have been excluded.**" Wooten v. State, 507 S.E.2d 202, 203 (Ga. Ct. App. 1998) (emphasis added). The Georgia Supreme Court further explained:

> Generally, however, questions as to the reasonableness of hypotheses are for the factfinder and where the factfinder is authorized to find that the circumstantial evidence was sufficient to exclude all reasonable hypotheses except the guilt of the accused, its determination will not be disturbed

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[1] Littlejohn, 228 S.C. at 328, 89 S.E.2d at 926.

[2] "To warrant a conviction on circumstantial evidence, the proved facts shall not only be consistent with the hypothesis of guilt, but shall exclude every other reasonable hypothesis save that of the guilt of the accused." Ga. Code Ann. § 24-14-6 (2013).

> on appeal unless the guilty verdict is insupportable as a matter of law.

Smith v. State, 721 S.E.2d 892, 895 (Ga. 2012).

Rational jurors have the experience with people and events to determine whether the inferences derived from the evidence point conclusively toward guilt. Indeed, a juror would certainly not be irrational in concluding the totality of the evidence presented here proved Appellant guilty beyond a reasonable doubt. This Court should grant this petition for rehearing and affirm the trial court's denial of the directed verdict motion, thereby affirming Appellant's convictions and sentence.

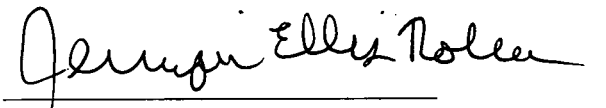
Conclusion

Based on the foregoing reasons coupled with the arguments raised in the Final Brief of Respondent and during oral argument, the State respectfully requests that the panel reconsider and rehear this matter, vacate its previous opinion, and affirm Appellant's convictions and sentence after finding that the trial judge correctly denied Appellant's motion for a directed verdict.

Respectfully submitted,

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

By: 
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October 23, 2014

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THE STATE,

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PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Respondent's Petition for Rehearing on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Kathrine H. Hudgins, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 23rd day of October, 2014.

Angela Bennett

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ALAN WILSON
ATTORNEY GENERAL

October 23, 2014

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: State v. Michael Wilson Pearson
Appellate Case No. 2012-212430

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of Respondent's Petition for Rehearing, along with proof of service, for filing in the above-referenced appeal.

Sincerely,

Jennifer Ellis Roberts
Assistant Attorney General
Bar Number 79818

MRF/
Enclosures

cc: Kathrine H. Hudgins, Esquire
Victim Services

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