STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Cherokee County
John C. Hayes, III, Circuit Court Judge

Appellate Case No: 2014-001544

The State,

Petitioner,

vs.

Kevin Tyrone Bennett,

Respondent.

BRIEF OF PETITIONER

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STATEMENT OF ISSUE ON APPEAL

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.

STATEMENT OF THE CASE

Appellant Bennett was indicted for second-degree burglary, petit larceny, and malicious damage to real property. Bennett was tried by jury and convicted as charged following trial on January 24-25, 2012. The Honorable John C. Hayes, III, sentenced Bennett to ten years imprisonment.

Bennett appealed his conviction and sentence. Following briefing and oral argument, the Court of Appeals reversed the convictions and sentences on May 28, 2014, finding that the trial court should have granted directed verdict on all charges. State v. Bennett, 408 S.C. 302, 758 S.E.2d 743 (Ct. App. 2014). The State filed its petition for rehearing on June 3, 2014. The Court of Appeals denied the petition by order filed June 19, 2014. This petition follows.

STATEMENT OF FACTS

Appellant Bennett was convicted for the nighttime burglary of the C.C. Woodson Community Center. He left his finger prints and blood behind: the finger prints were on a television that appeared to have been manipulated, and the blood, matching his DNA, was found on the wall immediately below where a stolen television had been mounted on the wall.

Officer Frank Osrechek was the first officer to respond after the alarm went off at the community center at about 3:30 a.m. He found a window smashed out and the door adjacent to the window broken. The glass was shattered "in thousands of pieces."[1] Officer Osrechek applied fingerprint dust to a number of items. He was able to lift prints from a television mounted on the wall in the community room. It appeared the television was manipulated as if someone was trying to remove it. On cross-examination, Officer Osrechek explained: "I focused on that television because it, it appeared to have been tampered with. It was resting in an unnatural position."[2] There were chairs placed below the television. In the computer room, there were holes in the wall and mounting anchors on the floor where it appeared a television had been. ROA. pp. 7-15; p. 21; p. 24; pp. 26-27.

Officer Steve McClure also responded to the community center. Surveying the computer room, it appeared a computer was missing. There were two chairs out of place against the wall as if someone was using them as leverage. They were underneath where a television had been. Officer McClure also recovered a tire iron from the

[1] ROA. p. 11, lines 20-22.

[2] ROA p. 21, lines 10-12.

computer room. ROA. pp. 27-31.

The director of the community center, Olivia Sartor testified. She confirmed that a television, a computer monitor, and keyboard were all stolen. She testified the community center's hours were 6 a.m. to 9 p.m. While the community center room is not locked when not in use, it is not a room open to the public or for people to merely sit and socialize. It is only used for scheduled events. Sartor saw Bennett in the community center several times before the burglary, but never in the community room. Usually there were group meetings at the time he was commonly at the center, such as the senior citizens craft group or bridge group. He was not involved in any of the activities in the community room and the only program he was involved in at the center was in the computer lab. Sartor was monitoring him when he was in the hall or computer room. ROA. pp. 41-48.

She testified to the following:

> Q: Do you routinely monitor people who are in the building?
>
> A: Well, I usually monitor people who seem suspicious to me, that really don't have a purpose, and Mr. Bennett normally walked through the building and he actually ended up going to the computer lab because I suggested that he pick a particular program to be a part of.

ROA. p. 50, lines 11-15.

She noticed abrasions on the wall by the television set in the community room where it appeared something was used in an attempt to pry the television set from its mount. ROA. p. 51.

Chris Banks from the Spartanburg Public Safety Department arrived at 9:30 a.m.

for a follow up investigation to determine if anything was missed. He found two small droplets of blood located two inches below where the stolen television in the computer lab had been. It was about one and half to two feet above the chairs propped underneath the television. ROA. pp. 53-56.

The DNA analyst determined that the DNA in the blood was a one in seventeen quintillion match to Bennett's DNA. ROA. p. 95. The fingerprints on the television in the community center matched Bennett's prints. ROA. pp. 116-118; p. 136.

ARGUMENT

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.

Our system of justice favors leaving the determination of guilt to a jury of laymen, an ingenious and time-worn system based on the premise that jurors have a superior collective wisdom through their life experience than even well-educated, well-seasoned professionals. The Court of Appeals' published opinion serves to undermine the jury's role in our criminal justice system because it weighs the evidence and relies on alternate hypotheses to explain circumstantial evidence – two things our federal and state case law advises trial courts not to do.

When considering a motion for directed verdict, the trial court is concerned with the existence of evidence, not its weight. State v. Walker, 349 S.C. 49, 53, 562 S.E.2d 313, 315 (2002). In reviewing the denial of a motion for a directed verdict, the reviewing court must view the evidence in the light most favorable to the State. Id. If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find that the case was properly submitted to the jury. State v. McGowan, 347 S.C. 618, 622, 557 S.E.2d 657, 659 (2001).

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. 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, at 319 (second emphasis added).

This 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, 753 S.E.2d 402, 409 (2013) (quoting State v. Cherry, 361 S.C. 588, 593, 606 S.E.2d 475, 478 (2004) (citations and internal quotations omitted)); see also State v. Richburg, 250 S.C. 451, 459, 158 S.E.2d 769, 772 (1968) ("When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury."). 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) *cited with approval in* Jackson, at 317 n.9.

In the instant case, the question is whether the State offered substantial circumstantial evidence of Bennett's identity sufficient for a rational juror to return a verdict. See Jackson; State v. Lane, 406 S.C. 118, 121, 749 S.E.2d 165, 167 (Ct. App. 2013) (noting the State bears the burden of proving beyond a reasonable doubt the identity of the defendant as the person committing the crime or crimes) *reversed by* State v. Karl Lane, Op. No. 27464 (S.C. Sup. Ct. filed November 12, 2014) (finding "in viewing the evidence in the light most favorable to the State, which we are constrained to do, the State presented substantial circumstantial evidence of Respondent's guilt").

In the instant case, a window was shattered leaving a thousand pieces of glass. Droplets of Bennett's blood were found directly under a stolen television. This evidence creates a strong inference that Bennett cut himself with glass and left blood under the television set he stole. Additionally, the community room in which his fingerprints were found was not open to the public, but only available for meetings of groups he was uninvolved with. The State's evidence indicates he was never in the community room during regular operating hours and would not be allowed in the room merely to hang out or watch television. The television he left his fingerprints on appeared to have been manipulated as if someone was attempting to remove it and two chairs were placed below the television as if the burglar was standing on them during the attempt to remove the television.

The Court of Appeals succinctly summarized the evidence of identity: (1) fingerprints found in the community room on the television that appeared to have been

manipulated and (2) two droplets of blood matching Bennett's DNA immediately below where the missing television was mounted. However, the Court of Appeals errantly weighed the evidence after acknowledging its existence, holding as follows:

> However, it is uncontroverted that Bennett was a frequent visitor to the Center prior to the crime, spending much of his time in the computer room. Additionally, while the director of the Center testified she was in the habit of monitoring Bennett when he was at the Center, she acknowledged that she typically left the Center at least one hour before it closed at night and she was not able to monitor Bennett when she was not at the Center. Further, though she directed Bennett to the computer room and did not see him participating in the group activities such as the afterschool programs and Senior Citizen programs held in the community room earlier in the day, she agreed there were other groups which met in the room at night and she was not typically at the Center the last hour it was open. The director also acknowledged the community room door was not always locked, and the scheduling of the activities in the community room would not control who had access to the room. Thus we cannot say it would be unexpected to find Bennett's DNA in the computer room [3] and his fingerprint in the community room.

Bennett, 408 S.C. at ___, 758 S.E.2d at 745-46.

The Court of Appeals erred in finding the trial court should have granted directed verdict because it weighed the evidence and considered whether other arguably reasonable hypotheses could be excluded. This Court made clear that "a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis." Hepburn, at 429, 753 S.E.2d at 409. The State offered evidence that the community center was not open for individuals to merely loiter in, but was for groups. Bennett took a computer class in the computer room, but no evidence indicated he was involved in any of

[3] This analysis leaves out one important fact – it was not merely DNA evidence found in the computer room, but Bennett's blood.

the groups meeting in the community room.[4] The State was not required to prove that Bennett furtively entered the community room during regular hours to place his hands on the television.

Further, while Bennett may have been in the computer room on prior occasions, leaving blood behind is hardly a common event, and its placement right below where the stolen television was located carries special significance. The most reasonable conclusion was that this blood was left during the burglary. The jury was not irrational for reaching this conclusion.

The Court of Appeals further erred because it failed to recognize that the evidentiary value of both of these pieces of evidence combined signified greater evidence than the sum value of each alone. It is simply compelling proof that Bennett's fingerprint was found on an item the thief attempted to steal and at the same time Bennett's blood was found immediately below where another item was actually taken in another room.

The problem is in the present case, the Court of Appeals required more than what Hepburn, Jackson, and Holland require – it required the State to show someone was observing Bennett at all times in case he snuck into the community room and required the State to prove that his blood did not end up underneath the location of the stolen television by some unknown (and unlikely) innocent means.

As a practical matter, Bennett would need to suffer an incredible series of unfortunate events to innocently leave behind such well-placed evidence to be

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[4] Sartor testified that Bennett "mainly participated in our computer lab. He didn't go in or do anything in the other rooms." ROA, p. 46, lines 6-7. Putting the evidence in the light most favorable to the State, the evidence is he did not go in or do anything in the community room until he committed the burglary. State v. Creech, 314 S.C. 76, 441 S.E.2d 635, 638 (Ct. App. 1994) (upon a motion for directed verdict, the evidence is viewed in the light most favorable to the State).

misinterpreted. The jury is not irrational to conclude this imagined series of unfortunate events did not occur but instead find the evidence firmly established Bennett's guilt beyond a reasonable doubt. The trial court did not err in allowing the jury to determine Bennett's guilt.

CONCLUSION

For all of the foregoing reasons, the Court of Appeals' opinion should be reversed. The convictions and sentences should be affirmed.

Respectfully submitted,

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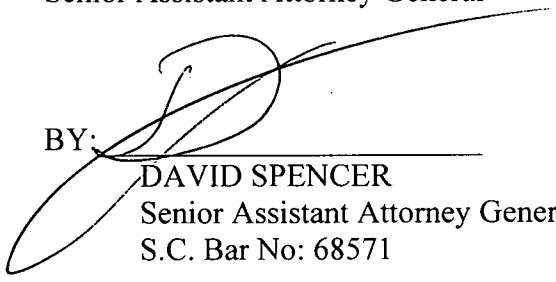

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December 2, 2014

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From Cherokee County

Honorable John C. Hayes, III, Circuit Court Judge

THE STATE,

Petitioner,

vs.

KEVIN TYRONE BENNETT,

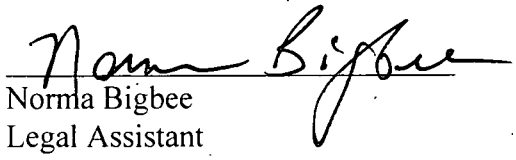
Respondent.

PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within Brief of Petitioner on respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, David Alexander, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, PO Box 11589, Columbia, SC 29211.

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

This 2nd day of December, 2014.



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December 2, 2014

VIA HAND DELIVERY
The Honorable Daniel E. Shearouse
Clerk of Court, South Carolina Supreme Court
Post Office Box 11330
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Re: **State of South Carolina v. Kevin Tyrone Bennett**
Appellate Case Tracking No: 2014-001544

Dear Mr. Alexander:

Enclosed please find the original and fourteen (14) copies of the Brief of Petitioner along with proof of service and thirteen (13) copies of the Appendix in the above-referenced case.

Sincerely,

David Spencer
Senior Assistant Attorney General

DS/nb
Enclosures

cc: David Alexander, Esquire (2 copies of Brief of Petitioner)
Ms. Trisha Allen - with enclosure