THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
The Honorable J. Derham Cole, Circuit Court Judge

Case No. 2011-GS-42-3015, 2011-GS-42-3016

The State, ...Respondent,

v.

Michael Anderson Manigan.....Appellant.

Appellate Case No. 2013-000253

APPELLANT MICHAEL ANDERSON MANIGAN'S FINAL BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATEMENT OF THE ISSUES ON APPEAL

I. Did the trial judge err in denying Manigan's directed verdict motion where, as here, the State failed to submit any direct or substantial circumstantial evidence tending to prove Manigan's guilt beyond a reasonable doubt?

II. Did the trial judge err in charging the jury that "the hand of one is the hand of all" where, as here, the investigating officer conceded there was no evidence tying the alleged accomplice to the crimes?

STATEMENT OF THE CASE

On June 17, 2011, Appellant Michael Anderson Manigan was indicted for first degree burglary and grand larceny. **R.pp.1-6**. In the indictments, the State alleges that, on December 11, 2010, Manigan entered the dwelling of Elizabeth Anne Vandahm with the intent to commit a crime therein and with two prior burglary convictions. **R.pp.1-6.** The State further alleges that Manigan carried away goods belonging to Vandahm, including a computer, printer, and jewelry, valued at more than two thousand dollars. **R.pp.1-6.**

In January 2013, the case was tried to a jury. **R. p.7.** After the State rested, Manigan moved for a directed verdict based on the lack of any direct or substantial circumstantial evidence tying Manigan to the crimes. **R. pp.149:1-154:17.** The trial judge denied the motion. **R. pp.154:19-155:5.** At the close of Manigan's case, Manigan renewed his directed verdict motion, and the trial judge again denied the motion. **R. pp.194:13-195:11.** Subsequently, the trial judge charged the jury that "the hand of one is the hand of all" over Manigan's objection. **R. pp.195:13-196:9; pp.228:20-229:18.**

On January 16, 2013, the jury returned a verdict against Manigan on both charges. **R. p.239:1-12.** On the same day, the trial judge sentenced Manigan to forty (40) years for first-degree burglary and ten (10) years for grand larceny. **R. pp.244:25-245:10.** On January 24, 2013, Manigan appealed his conviction and sentence. **R.p.247.**

FACTS

In 2010, Elizabeth Vandahm resided at 224 Carlisle Street in Spartanburg, South Carolina. **R. pp.21:14-22:15.** At the time, Anna Christine Holcombe lived next door.[1] **R. p.26:2-5; p.91:8-20.** Michael Manigan lived across the street from Vandahm and Holcombe. **R. p.50:1-14.** Manigan's front porch is visible from Vandahm's back yard. **R. p.52:3-5.**

On Saturday, December 11, 2010, Vandahm left for work around 1:00pm. **R. pp.22:16-23:4, p.24:14-17.** Vandahm's father testified that he stopped by Vandahm's house between 5:15pm and 6:00pm, but did not notice anything unusual. **R. pp.79:17-80:23.** In the meantime, Holcombe began cutting her grass around 4:00pm and worked outside until around 9:30pm. **R. pp.93:14-94:25.** During this time, Holcombe noticed Manigan on his front porch. **R. pp.95:16-96:7.** Manigan spoke to Holcombe several times, discussing yard work and how much grass Holcombe was cutting. **R. p.96:6-8.** Manigan's cousin, Gary Manigan, also spoke to Holcombe. **R. p.96:16-24.** Holcombe testified that she considered Michael Manigan a neighbor and friend. **R. pp.96:25-97:3.**

When Vandham arrived home from work around 10:30pm, she entered through the front door, proceeding to the back door to let her dog out. **R. p.25:14-19.** As she approached the kitchen, she observed broken glass from her kitchen window and a piece of cement lying in the middle of her kitchen floor. **R. p.25:14-19.** The kitchen window was approximately 7 ½ feet from the ground outside her home. **R. pp.27:25-28:3.** She believed the cement came from a fence post in her back yard. **R. p.40:14-24.** In her bathroom, Vandahm noticed a brick and more broken glass. **R. p.27:12-16.** Vandahm's computer monitor, printer, and jewelry, including a pair of diamond earrings, were missing. **R. p.26:12-24.** Vandahm called the police and waited at

[1] Holcombe explained that, if she were standing on Carlisle Street, facing Vandahm's house, Holcombe's house would have been the next house to her left. **R. p.91:15-20.**

Holcombe's house until they arrived. **R. pp.25:20-26:5.**

Vandahm had a six-foot tall privacy fence enclosing her back yard. **R. p.28:17-20.** During a severe windstorm a few months prior to the break-in, a large oak tree had uprooted, tearing a gap in the privacy fence. **R. p.28:20-25.** The gap in the privacy fence was repaired with a four foot chicken wire fence. **R. pp.28:20-29:17.** Vandahm testified it would have been impossible to climb over the chicken wire fence. **R. p.29:15-17.**

After the police arrived, Vandahm noticed a trash bag lying in the area behind the chicken wire fence, which Vandahm testified was within her back yard. **R. p.36:8-22, p.37:6-13, pp.38:21-39:4.** The trash bag contained Vandahm's computer monitor, printer, and keyboard. **R. p.36:8-22; State's Exs. 14-17.** The area where the trash bag was located contained vines, dead trees, tree stumps, and trash. **R. p.52:1-16.** Vandahm believed someone had used the area to dump trash and other stuff some time ago. **R. p.52:10-16.** Holcombe explained that the area contained "a lot of trash and so forth . . . nobody really lived in that area so it was, um, thorns and trash, limbs and oak trees, that's basically all that it is." **R. p.92:18-22.**

Charles Hair, a police officer with the City of Spartanburg Police Department, responded to Vandahm's call. **R. pp.102:24-103:13.** Hair determined that the point of entry was Vandham's kitchen window. **R. p.105:19-21.** After Vandahm noticed the black trash bag in the area behind the chicken wire fence, Hair retrieved the bag and dusted the monitor and printer for fingerprints. **R. p.112:3-16; State's Exs. 19A-19D.** He discovered four prints on the monitor and printer. **R. p.113:1-114:2.** Of relevance here, the first print was lifted from the backside of the computer monitor, and the fourth print was lifted from the front side of the printer. **R. pp.113:1-114:2.** It was eventually determined that these two prints belonged to Manigan. **R. pp.124:24-125:3, pp.127:6-130:21, p.137:5-18; pp.131:10-133:19; Exs. 19A, 19D, 20, 21, 22, 23.**

Following the police investigation that night, several neighbors came to help Vandahm board up the windows at her home. **R. p.49:18-22.** Manigan was one of the neighbors who visited. **R. p.50:1-14.** Later that night, Manigan returned to Vandahm's home and expressed that he believed the break-in was a shame. **R. p.53:12-25.**

On Monday, December 13, 2010, Gary Manigan received a loan from E-Z Money Pawn Shop in Spartanburg, secured by Vandahm's diamond earrings. **R. pp.156:1-157:13.** Although the investigating officer initially obtained warrants against Gary Manigan for burglary and grand larceny, the warrants were never served, and the investigating officer testified there was no evidence linking Gary Manigan to the break-in at Vandahm's residence. **R. pp.164:16-165:19.**

Manigan testified at trial that he often walks behind Vandahm's privacy fence to visit friends on Oakdale Court. **R. p.173:17-23, p.175:7-13.** On the night of the break-in, Manigan testified that he came across a black bag in this area while he was returning to his home around 9:00pm. **R. pp.176:20-177:25; p.183:1-11.** Manigan explained that he initially kicked the bag to see what was in it, since he had not seen it when he left, and that he looked in the bag after he heard a clanking sound. **R. pp.183:1-184:11.**

As previously discussed, Manigan was indicted for first-degree burglary and grand larceny arising from the break-in at Vandahm's home. **R.pp.1-6.** After a jury trial, he was convicted on both counts and sentenced to forty years for first-degree burglary and ten years for grand larceny. **R. p.239:1-12, pp.244:25-245:10.** This appeal follows.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." State v. Dawson, 402 S.C. 160, 163, 740 S.E.2d 501, 502 (2013). The appellate court is bound by the factual findings of the trial court unless they are clearly erroneous. See State v. Patterson, 367 S.C. 219,

224, 625 S.E.2d 239, 241 (Ct. App. 2006).

ARGUMENT

I. The trial judge erred in denying Manigan's directed verdict motion where, as here, the State failed to submit any direct or substantial circumstantial evidence tending to prove beyond reasonable doubt that Manigan committed first-degree burglary or grand larceny.

The trial judge erred in failing to grant a directed verdict to Manigan based on a lack of direct or substantial circumstantial evidence reasonably tending to prove Manigan's guilt beyond a reasonable doubt. Consequently, Manigan's convictions should be reversed.

On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State. State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011). "The defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." Id. "However, if there is any direct or *substantial* circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." Id. (emphasis in original). "A circuit judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty." Id.

"This Court has repeatedly affirmed the principle that when the State fails to produce substantial circumstantial evidence that the defendant committed a particular crime, the defendant is entitled to a directed verdict." Id. "The State has the burden of proving beyond a reasonable doubt the identity of the defendant as the person who committed the charged crime or crimes." State v. Lane, 406 S.C. 118, ___, 749 S.E.2d 165, 167 (Ct. App. 2013), reh'g denied (Nov. 22, 2013).

In the present case, the State relied solely on circumstantial evidence, namely: (1) Manigan's prints on Vandahm's computer monitor and printer within a black bag found in an area containing trash and other stuff on the other side of Vandahm's fence; (2) Manigan's

interactions with Holcombe prior to the burglary; and (3) Manigan's interactions with Vandahm after the burglary.

A long line of South Carolina appellate decisions involving similar circumstances strongly support the reversal of Manigan's convictions in the present case. For instance, in State v. Gilliam, 245 S.C. 311, 313, 140 S.E.2d 480, 481 (1965), the defendant was convicted of housebreaking with intent to steal and grand larceny. "[T]he circumstances relied upon by the State to establish the commission of the crimes charged in the indictment were: The broken pane of glass, the unlocked position of the window latch, the absence of the stamps from an employee's desk, and the defendant's fingerprint found on a fragment of glass outside the building." Id. at 315, 140 S.E.2d at 481.

The Court reversed the convictions, concluding: "The unexplained presence of defendant's fingerprint on a fragment of the broken pane outside the building might inculpate him if the evidence established that the building was feloniously entered and by this means, which, as has been seen, it fails to do." Id. at 315, 140 S.E.2d at 482. The Court further recognized: "We are convinced that the circumstances relied upon by the State, considered together, did not furnish such substantial evidence of the guilt of the defendant as to justify submission of the case to the jury." Id. at 315, 140 S.E.2d at 482.

In State v. Woods, 273 S.C. 266, 266-67, 255 S.E.2d 680, 681 (1979), defendants were also convicted of housebreaking and larceny. The State presented evidence that, on the day Roger Crowe's residence had been broken into, "appellants parked their car along a nearby road, climbed a fence, and entered the woods in the direction of the Crowe residence." Id. at 267, 255 S.E.2d at 681. "Appellants walked along the street in front of the Crowe residence." Id. "Thereafter, appellants returned to their parked car, through the woods they had originally

entered, and drove away from the area." Id. "Around 6:00 p.m. that evening the majority of the stolen property was located in a clump of undergrowth near the route used by appellants when returning to their parked car." Id.

The Court reversed appellants' convictions, explaining: "In the instant case there is evidence sufficient to raise a strong suspicion of appellants' guilt." Id. "However, we are not convinced that there is any substantial evidence which reasonably tends to prove their guilt or from which their guilt may be fairly and logically deduced." Id. "Suspicion, however strong, does not suffice to sustain a conviction." Id.

In State v. Mitchell, 341 S.C. 406, 408, 535 S.E.2d 126, 127 (2000), the defendant was convicted of first-degree burglary relating to a purported break-in at the residence of Hugh Mathis. Mathis discovered pieces of glass in a spare bedroom at his home, noticed a hole in the glass window, and further noticed that the window was unlocked. Id. He subsequently discovered that two guns were missing. Id. "There was no glass on the exterior of the house, but there was a screen that the officer was able to get an identifiable fingerprint." Id. "The fingerprint matched that of the defendant." Id.

The Court of Appeals reversed defendant's convictions based on a lack of substantial circumstantial evidence, and the Supreme Court affirmed upon certiorari review, recognizing: "The evidence in this case is entirely circumstantial." Id. at 409, 535 S.E.2d at 127. "The only evidence linking respondent to the burglary is the fingerprint." Id. "The State did not present any evidence whether the screen was on the window at the time the window was broken or when the screen had been removed." Id. "The fact that respondent's fingerprint was on a screen that was propped up against the house does not prove entry where respondent had been in and around the victim's house as least three times prior to the burglary." Id.

More recently, this Court overturned a first-degree burglary conviction under circumstances substantially similar to the present case in State v. Lane, 406 S.C. 118, 749 S.E.2d 165 (Ct. App. 2013), reh'g denied (Nov. 22, 2013). In Lane, "[t]he State presented the following evidence to establish Lane committed first-degree burglary: (1) the testimony of [the victim's] neighbor that a burgundy/red 'Mitsubishi Gallant-type car' with a paper tag and primer painted panel was in [the victim's] driveway the day of the theft; (2) testimony that, at times, Lane drove a red/burgundy Mitsubishi Gallant belonging to his girlfriend that matched the description given by [the victim's] neighbor; (3) testimony that Lane drove the Gallant the day of the theft; (4) testimony that a folded piece of paper belonging to Lane was found in [the victim's] driveway that was not originally found by the police but found later outside; and (5) testimony that Lane did not want to talk to police officers the day after the theft and asked his girlfriend's mother to lie to officers concerning his whereabouts." Id.

This Court concluded: "Viewing the foregoing evidence in the light most favorable to the State, we find the State did not present substantial circumstantial evidence to reasonably prove Lane was the person who committed the burglary." Id. "At most, the evidence the State presented raises only a mere suspicion that Lane committed the crime." Id.

In South Carolina, it is well established that fingerprint evidence, even fingerprint evidence near the point of entry of the scene of a crime, is insufficient to establish the guilt of an accused beyond a reasonable doubt. See Gilliam, 245 S.C. at 315, 140 S.E.2d at 482 (fingerprints on broken glass at point of entry not enough); Mitchell, 341 S.C. at 409, 535 S.E.2d at 127 (fingerprint on window screen outside point of entry insufficient to support conviction); State v. Arnold, 361 S.C. 386, 390, 605 S.E.2d 529, 531 (2004) ("[R]espondent's fingerprint on the coffee cup lid tab establishes he was in the borrowed BMW on the same day the victim was last

seen alive. The fact that the BMW was found abandoned in Tennessee, the same state where respondent was located after his stay in Savannah, raises a suspicion of guilt but is not evidence that respondent killed Dr. Cox."). Here, there is even stronger support for a directed verdict, as the only fingerprint evidence was located on items within a black trash bag behind a chicken wire fence well away from the point of entry.

Likewise, evidence of a defendant's mere presence in the general area where a crime has been committed is insufficient to support a conviction on substantial circumstantial evidence. For instance, in State v. Walker, 349 S.C. 49, 54, 562 S.E.2d 313, 315 (2002), the State relied on a videotape of the defendant harvesting marijuana on a third party's property to support a conviction for cultivating or attempting to cultivate marijuana on the land of another. The Court reversed the denial of a directed verdict motion, recognizing: "[A]part from his presence in the area, there is no evidence connecting Petitioner with the cultivation of the marijuana." Id.; see also State v. Johnson, 291 S.C. 127, 129, 352 S.E.2d 480, 482 (1987) ("Mere presence at the scene of a crime is insufficient to convict one as a principal on the theory of aiding and abetting.").[2]

Finally, Manigan's proximity to the property taken from Vandahm after the crime is also insufficient to support Manigan's conviction. For instance, in Odems, 395 S.C. at 588, 720 S.E.2d at 51, the Court recognized: "The State's case against Petitioner relied primarily on three pieces of circumstantial evidence: (1) the fact that less than ninety minutes after the burglary, police located Petitioner in the getaway car with the burglars and the stolen goods; (2) Petitioner

[2] Here, there is no evidence placing Manigan at the scene of the crime. Holcombe testified she observed Manigan on his front porch across the street and spoke to Manigan several times on the day of the burglary, but never testified that she observed Manigan on or around Vandahm's property. Manigan's fingerprints were found in a black trash bag on the other side of Vandahm's chicken wire fence, which Vandahm testified was impossible to climb.

fled from law enforcement; and (3) Petitioner asked an uninvolved person to lie for him."

The Court reversed the petitioner's conviction, explaining: "The State's key circumstantial evidence: (1) Petitioner's location in the getaway car a relatively short time after the robbery; (2) Petitioner's flight from law enforcement; and (3) Petitioner's attempt to enlist the assistance of an uninvolved individual, do not point to his guilt for the crimes charged to the exclusion of every other reasonable hypothesis-namely, the notion that he did in fact join [one of the burglars] at a gas station following the crime." Id. at 590-91, 720 S.E.2d a 52-53.

In short, the State's evidence of Manigan's guilty is entirely circumstantial. At most, it raises merely a suspicion of Manigan's guilt. It does not rise to the level of substantial circumstantial evidence. Consequently, Manigan's convictions should be reversed.

II. The trial judge erred in charging the jury that "the hand of one is the hand of all" where, as here, the investigating officer conceded there was no evidence tying the alleged accomplice to the crimes.

The trial judge erred in charging the jury that "the hand of one is the hand of all" where, as here, the investigating officer conceded that there was no evidence tying the alleged accomplice—Gary Manigan—to the crimes. This error also warrants reversal.

"The evidence presented at trial determines the charged jury instruction." State v. Blurton, 352 S.C. 203, 207, 573 S.E.2d 802, 804 (2002). "The purpose of instructions is to enlighten the jury and to aid it in arriving at a correct verdict." State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987). "It is error to give instructions which are calculated to confuse or mislead the jury." Id. "If a jury instruction is provided to the jury that does not fit the facts of the case, it may confuse the jury." Blurton, 352 S.C. at 208, 573 S.E.2d at 804. "Only law applicable to the case should be charged to the jury." Id. "Instructions that do not fit the facts of the case may serve only to confuse the jury." Id.

Under the "hand of one is the hand of all" theory of accomplice liability, "one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." State v. Langley, 334 S.C. 643, 648, 515 S.E.2d 98, 101 (1999). "To admit evidence under this theory, the existence of the common design and the participation of the accused against whom the evidence is offered should first be shown." Id.

In the present case, Holcombe testified that she spoke with Michael and Gary Manigan while cutting her grass prior to the burglary. Gary Manigan later deposited Vandahm's diamond earrings with a pawn shop in return for a loan. Nevertheless, the officer investigating Gary Manigan refused to serve warrants for burglary or larceny on Gary Manigan, explaining that there was no evidence tying Gary Manigan to the burglary.

Under these circumstances, the trial judge's charge to the jury on "the hand of one is the hand of all" theory of accomplice liability served only to confuse the jury. No evidence supports this charge in light of the investigating officer's conclusion that Gary Manigan was not involved in the burglary or larceny. Consequently, the trial judge should not have charged the jury on the "hand of one is the hand of all." This legal error also warrants reversal.

Conclusion

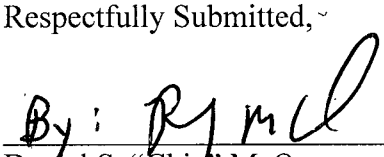
The trial judge committed reversible error in denying Manigan's motions for a directed verdict. There was no direct or substantial circumstantial evidence establishing Manigan's guilt. At most, the State's evidence raised a mere suspicion of Manigan's guilt.

In addition, the trial judge committed reversible error in charging the jury on the "hand of one is the hand of all" theory of accomplice liability. The investigating officer unequivocally testified that he determined not to serve warrants on Gary Manigan for burglary or larceny due to

the lack of evidence supporting such charges. Moreover, this unsupported charge served to confuse the jury, again warranting reversal.

Based on the foregoing, Manigan contends that his convictions should be REVERSED. In the alternative, if the Court determines only that the trial judge erred in charging the jury on accomplice liability, this Court should REVERSE the trial judge and remand for a new trial.

Respectfully Submitted,

By: 

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December 10, 2014
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CERTIFICATE OF COUNSEL

I hereby certify that the Final Brief and Final Reply Brief of Appellant Michael Anderson Manigan comply with Rule 211(b), SCACR.

By: _____
Daniel S. ("Chip") McQueeney, Jr.

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PROOF OF SERVICE

I certify that I have served the **Final Brief and Final Reply Brief** on Respondent The State of South Carolina, by depositing a copy in the United States Mail, postage prepaid, on December 10, 2014, addressed to its counsel of record, Julie Kate Keeney, Assistant Attorney General, at Post Office Box 11549, Columbia, SC 29211-1549 and to Robert M. Dudek, S.C. Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, SC 29211-1549.

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