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THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. Supreme Court

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Opinion No: 5251 (S.C. Ct. App. Filed October 8, 2014)

Appellate Case No: 2012-212430

THE STATE PETITIONER,

v.

MICHAEL WILSON PEARSON RESPONDENT.

APPENDIX
VOLUME 2 OF 2

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Clark also testified concerning the investigation into co-defendant Victor Weldon's involvement in the crimes. He noted that during an interview with Weldon, Weldon denied knowing Pearson or having any involvement in the crimes. Clark indicated, however, that records from the South Carolina Vocational Rehabilitation Center revealed Pearson and Weldon both worked at the same job training program from December 9 through December 12, 2008.

Richard Gamble, a local landscaper, testified Pearson had previously assisted him in doing landscaping work for Gibbons and Gibbons' son, who lived on the same block. Gamble could not recall the exact date of the landscaping project; however, he indicated it took place in the spring of 2009 or 2010. He estimated the project lasted "at least 5 days." Gamble testified that while working on the project, he observed Pearson enter Gibbons' garage in order to retrieve job-related tools that were located in the storage area.

The State also presented the testimony of John Hornsby, who worked as an area supervisor at the South Carolina Vocational Rehabilitation Center. According to Hornsby, time cards and attendance records revealed Pearson and Weldon were both assigned to the facility's woodshop from December 9 through December 12, 2008. Hornsby stated that around twenty-five individuals generally worked at the woodshop on a daily basis.

After the State rested, Pearson and Weldon both moved for a directed verdict on all charges. Pearson argued that even though his fingerprint was found on the outside of Gibbons' car, the fingerprint was insufficient to place him at the crime scene. In reply, the State argued the fingerprint was found on the rear of the vehicle, where Gibbons testified one of the men who robbed him had been seated as they fled his house. The State also pointed to evidence that the two co-defendants attended the same job training program over a four-day period, as well as testimony that Pearson had done landscaping work at Gibbons' home. The trial court denied Pearson's and Weldon's motions for a directed verdict. The trial court stated:

> As far as Mr. Pearson's fingerprint[,] the evidence in this case that has come before this jury that I recall he told the police officer he did not know Mr. Gibbons. He had not been at his house or his place of business. His vehicle was taken that morning. Within 30 minutes[,] the vehicle was found abandoned a mile and a half or two miles away. The vehicle was processed and was carried to the auto parts place and processed. That day his fingerprint

> was found on the vehicle. And I certainly think at least that's sufficient evidence for the jury to make a determination of guilt or innocence in this case. And I respectfully deny your motion.

The jury found Pearson and Weldon guilty of burglary in the first degree, armed robbery, grand larceny, kidnapping, and possession of a weapon during the commission of a violent crime. The trial court sentenced Pearson to a total of sixty years' imprisonment. This appeal followed.

STANDARD OF REVIEW

"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). "[I]f 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.*

LAW/ANALYSIS

Pearson argues the circumstantial evidence presented by the State did not rise to the level of substantial circumstantial evidence necessary to submit the case to the jury. We agree.

"'A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged.'" *State v. Lane*, 406 S.C. 118, 121, 749 S.E.2d 165, 167 (Ct. App. 2013) (quoting *State v. Brannon*, 388 S.C. 498, 501, 697 S.E.2d 593, 595 (2010)). "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." *Id.*; *see also State v. Schrock*, 283 S.C. 129, 133, 322 S.E.2d 450, 452 (1984) (noting the State has the burden of proving "the accused was at the scene of the crime when it happened and that he committed the criminal act"). If there is substantial circumstantial evidence reasonably tending to prove the defendant's guilt, an appellate court must find the trial court properly submitted the case to the jury. *Lane*, 406 S.C. at 121, 749 S.E.2d at 167 (citing *Odems*, 395 S.C. at 586, 720 S.E.2d at 50). "Evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt." *State v. Bostick*, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011). "The lower court should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty." *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000). "'Suspicion' implies a

belief or opinion as to guilt based upon facts or circumstances [that] do not amount to proof." *State v. Buckmon*, 347 S.C. 316, 322, 555 S.E.2d 402, 404–05 (2001).

In this matter, the key evidence relied upon by the State to place Pearson at the crime scene was the presence of his fingerprint on the rear of Gibbons' vehicle. Our courts have addressed the sufficiency of fingerprint evidence where the State relies on such evidence to prove a defendant's guilt. We find a review of these cases is instructive in determining whether the circumstantial evidence presented by the State met the "substantial circumstantial evidence" standard.

In *Mitchell*, our supreme court affirmed this court's decision that Mitchell was entitled to a directed verdict on a burglary charge. 341 S.C. at 409, 535 S.E.2d at 127. The only evidence linking Mitchell to the burglary was his fingerprint on a window screen that was propped up against the exterior of the victim's house. *Id.* at 408–09, 535 S.E.2d at 127. The court found the fingerprint evidence was insufficient to prove Mitchell's guilt because there was testimony Mitchell had been in and around the victim's house at least three times before the burglary. *Id.* at 409, 535 S.E.2d at 127. Additionally, the court reasoned a directed verdict was appropriate because "[t]he 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.*

Similarly, in *State v. Bennett*, 408 S.C. 302, 306, 758 S.E.2d 743, 745 (Ct. App. 2014), this court assessed whether evidence of Bennett's fingerprint and DNA at the site of a burglary constituted substantial circumstantial evidence. Therein, a television, computer, monitor, and keyboard were stolen from a Spartanburg community center. *Id.* at 303–04, 758 S.E.2d at 744. Bennett's fingerprint was discovered on a wall-mounted television in the community room that appeared to have been manipulated by the burglar. *Id.* Additionally, two droplets of Bennett's blood were found directly below the location of a missing television in the computer room. *Id.* at 305, 758 S.E.2d at 745. It was undisputed that Bennett was a frequent visitor to the center before the crime and spent much of his time in the computer room. *Id.* at 307, 758 S.E.2d at 745. The director of the center testified she did not recall seeing Bennett in the community room, which was solely used for scheduled events. *Id.* at 304–05, 758 S.E.2d at 744. However, the director acknowledged that the community room was not always locked or consistently monitored. *Id.*

Applying the directed verdict standard, the *Bennett* court found the State did not present substantial circumstantial evidence reasonably proving Bennett's guilt. *Id.*

at 307, 758 S.E.2d at 746. The court recognized the evidence presented by the State "undoubtedly placed Bennett at the *location where a crime ultimately occurred.*" *Id.* However, the court rejected the State's assertion that the evidence served to "place[] Bennett *at the scene of the crime.*" *Id.* The court reasoned the exact locations of the DNA and fingerprint evidence "d[id] not rise above suspicion" because it was not "unexpected" to find Bennett's DNA and fingerprints in a communal area he frequented before the crime. *Id.*

Additionally, in *State v. Arnold*, 361 S.C. 386, 390, 605 S.E.2d 529, 531 (2004), our supreme court held that fingerprint evidence placing Arnold in the victim's borrowed vehicle on the same day the victim was last seen alive was not substantial and merely raised a suspicion of Arnold's guilt. In *Arnold*, the victim's body was discovered off a dirt road in Colleton County, South Carolina. *Id.* at 388, 605 S.E.2d at 530. The victim was last seen alive three days earlier, when he borrowed a colleague's BMW to go to a dentist appointment. *Id.* One of the State's witnesses testified he had introduced the victim to Arnold. *Id.* The witness indicated he had received a message from Arnold to call him at a phone number belonging to Arnold's father, who lived in Gray, Tennessee. *Id.* at 389, 605 S.E.2d at 530. The borrowed BMW was later found in a parking lot in Johnson City, Tennessee, approximately ten miles away from where Arnold's father lived. *Id.* at 389–90 & n.3, 605 S.E.2d at 530–31 & n.3. The BMW had unspecified scratches on it, and a coffee cup lid containing Arnold's fingerprint was found in the car's center console. *Id.* at 389, 605 S.E.2d at 530. In concluding that the circumstantial evidence presented by the State was insufficient to overcome a directed verdict motion, the court reasoned:

> Viewing the evidence most favorably to the State, [Arnold]'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 [Arnold] was located after his stay in Savannah, raises a suspicion of guilt but is not evidence that [Arnold] killed [the victim]. Further, there is no evidence [Arnold] was at the scene of the crime, which according to the State's theory was in Colleton County.

Id. at 390, 605 S.E.2d at 531 (footnote omitted).

Under the facts of this case and consistent with the reasoning in the aforementioned cases, there is insufficient evidence tying Pearson to the crimes. Here, the most damaging evidence was Pearson's fingerprint on the rear of Gibbons' vehicle. However, there was other evidence showing Pearson may have had an opportunity to come in contact with the vehicle before the crimes occurred. For instance, there was testimony that Gibbons regularly parked his vehicle in a public lot adjacent to his store. Moreover, there was testimony that Pearson assisted with a five-day landscaping project at Gibbons' residence, and he could have come in contact with the vehicle at that time. *See Mitchell*, 341 S.C. at 409, 535 S.E.2d at 127 (finding that fingerprint evidence was insufficient to prove the defendant's guilt because there was testimony the defendant had been in and around the victim's house at least three times before the burglary). Most notably, the State's fingerprint expert testified she could not determine when the print was placed on the vehicle and that such a print could remain on a vehicle for an indefinite period if left undisturbed. Because the State offered no timing evidence to contradict reasonable explanations for the presence of the fingerprint, the jury could only have guessed the fingerprint was made at the time of the crimes. *See Buckmon*, 347 S.C. at 322–23, 555 S.E.2d at 405 (holding defendant was entitled to a directed verdict where none of the evidence presented by the State placed defendant at the crime scene and the jury was left to speculate as to defendant's guilt).

We further note the additional incriminating evidence presented by the State failed to fill the gaps in proof and left the jury to speculate as to Pearson's guilt. *See State v. Ballenger*, 322 S.C. 196, 199, 470 S.E.2d 851, 853 (1996) ("The motion [for a directed verdict] should be granted where a jury would be speculating as to the accused's guilt or where the evidence is sufficient only to raise a strong suspicion of guilt." (citation omitted)). In addition to the fingerprint, the State offered evidence that Pearson and his co-defendant, Weldon, previously attended the same job training program. It would be speculative, however, to infer a relationship between the two co-defendants considering approximately twenty-five individuals took part in the job training program. At most, this evidence demonstrates the two co-defendants worked in the same facility at the same time. Moreover, Pearson and Weldon both denied knowing each other during their separate interviews with investigators. Although it is possible Pearson and Weldon interacted during the program, it is not incredible that neither man could remember a fellow participant in a program they attended more than a year before the crimes. Despite the fact Weldon was tied to the crimes because of his DNA on the duct tape, nothing tied Pearson to the crime scene.

Viewing all of the evidence in the light most favorable to the State, there was insufficient evidence to submit the case to the jury. The recovered fingerprint directly tied Pearson to the stolen vehicle. Nonetheless, the fingerprint merely raised a suspicion of Pearson's guilt because there was no additional evidence showing when the fingerprint was placed on the vehicle. Moreover, none of the other evidence presented by the State placed Pearson at the crime scene or established a relationship between Pearson and Weldon. For this reason, the jury could only have guessed Pearson was involved in the crimes. "[S]uspicion, however strong, does not suffice to sustain a conviction." *State v. Hyder*, 242 S.C. 372, 379, 131 S.E.2d 96, 100 (1963). A defendant is entitled to a judgment of acquittal "where [the] evidence merely raises a suspicion of guilt, or is such as to permit the jury to merely conjecture or to speculate as to the accused's guilt." *State v. Brown*, 267 S.C. 311, 316, 227 S.E.2d 674, 677 (1976). Accordingly, we find the trial court erred by denying Pearson's directed verdict motion.

CONCLUSION

For the foregoing reasons, Pearson's convictions are

REVERSED.

FEW, C.J., and SHORT, J., concur.

STATE OF SOUTH CAROLINA
In The 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

---

[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,

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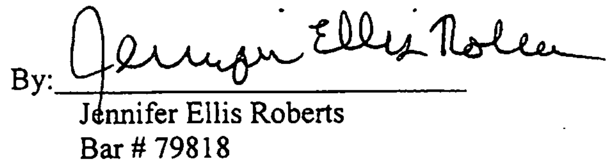
By: 

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October 23, 2014

STATE OF SOUTH CAROLINA
IN THE 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,

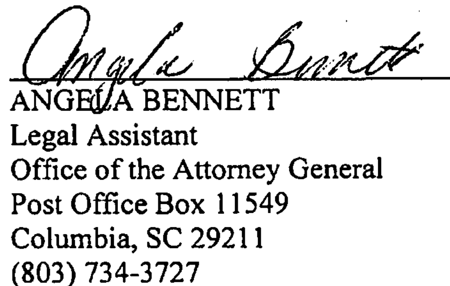
Appellant.

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.



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The South Carolina Court of Appeals

RECEIVED
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ATTORNEY GENERALS OFFICE

The State, Respondent,

v.

Michael Wilson Pearson, Appellant.

Appellate Case No. 2012-212430

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

_______________ C.J.

_______________ J.

_______________ J.

Columbia, South Carolina

FILED
November 21, 2014

cc:
Kathrine Haggard Hudgins, Esquire
Jennifer Ellis Roberts, Esquire
Alan McCrory Wilson, Esquire