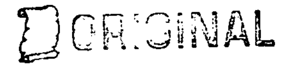

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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Clarendon County

R. Ferrell Cothran, Jr., Circuit Court Judge

THE STATE,

PETITIONER,

V.

MICHAEL WILSON PEARSON,

RESPONDENT

APPELLATE CASE NO. ~~2012-212430~~
2014-002741

AMENDED RETURN TO PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR RESPONDENT

INDEX

INDEX 1

QUESTION PRESENTED 2

STATEMENT OF THE CASE 3

ARGUMENT

The Court of Appeals applied the correct standard of review and correctly found that the trial judge erred in refusing to direct a verdict of acquittal for burglary first degree, armed robbery, grand larceny, kidnapping and possession of a weapon during the commission of a violent crime when the only evidence linking Respondent to the crime scene was a fingerprint found on the victim's vehicle that was stolen at the time of the incident and found about twenty minutes later abandoned in the road with the motor running and evidence that Petitioner denied knowing the victim and where he lived despite testimony that Petitioner had helped with landscaping work for the victim and his son 6

CONCLUSION 13

QUESTION PRESENTEND BY THE STATE

Did the Court of Appeals err in reversing Respondent's conviction where the Court misapplied the standard for reviewing a trial court's denial of a motion for a directed verdict?

ALTERNATE QUESTION PRESENTED

Did the Court of Appeals apply the correct standard of review and correctly find that the trial judge erred in refusing to direct a verdict of acquittal for burglary first degree, armed robbery, grand larceny, kidnapping and possession of a weapon during the commission of a violent crime when the only evidence linking Petitioner to the crime scene was a fingerprint found on the victim's vehicle that was stolen at the time of the incident and found about twenty minutes later abandoned in the road with the motor running, and evidence that Respondent denied knowing the victim and where he lived despite testimony that Respondent had helped with landscaping work for the victim and his son?

STATEMENT OF THE CASE

In January of 2011, the Clarendon County Grand Jury indicted Respondent Michael Pearson and his co-defendant, Victor Weldon, in a six count indictment for burglary first degree, attempted murder, armed robbery, grand larceny, kidnapping and possession of a weapon during the commission of a violent crime, indictment #2011-GS-14-0068. On May 14, 2012, Pearson and Weldon proceeded to jury trial before the Honorable Ralph F. Cothran. Harry Devoe represented Pearson. John and Laura Knobeloch represented co-defendant Weldon. Solicitor Ernest A. Finney, III and Jason Corbett prosecuted the case. The attempted murder charge was not submitted to the jury. On May 18, 2012, the jury found both Pearson and Weldon guilty of the other charges. Judge Cothran sentenced Pearson to 30 years for burglary first degree, 30 years consecutive for armed robbery, 5 years concurrent for grand larceny, 20 yeas concurrent for kidnapping and 5 years concurrent for the weapon charge. A timely notice of intent to appeal was served on May 25, 2012, and the direct appeal perfected.

On June 17, 2014, a three judge panel of the South Carolina Court of Appeals heard oral arguments in Pearson's direct appeal. On July 30, 2014, the Court of Appeals reversed Pearson's convictions in a published opinion. State v. Pearson, Op. No. 5251 (S.C.Ct.App. filed July 30, 2014). The State filed a petition for rehearing and on October 8, 2014, the Court of Appeals issued a substituted opinion, still reversing Pearson's convictions. State v. Pearson, 410 S.C. 392, 764 S.E.2d 706 (Ct.App. 2014). The State filed a second petition for rehearing that was denied on November 21, 2014. On December 22, 2014, the State filed a petition for writ of certiorari. This return follows.

STATEMENT OF FACTS

On May 15, 2010, at approximately 6:20 in the morning three masked black males assaulted and robbed Edward "Slick" Gibbons in his garage as he was leaving for work. Gibbons owned a local auto parts store. Gibbons testified that during the attack the men put tape across his face. (R. p. 42, line 22 – p. 43, lines 1-8). The three men fled the scene in Gibbons' 1987 El Camino vehicle. Gibbons testified that two of the men got inside the El Camino and the third man got in the back in the flatbed. (R. p. 50, lines 7-21).

A local farmer, Cecil Eaddy, found the El Camino about twenty minutes later abandoned in the road with the keys in the ignition. (R. pp. 113-117). Eaddy knew Gibbons and recognized the car. (R. p. 113, lines 18-25). Eaddy called Gibbons' auto parts store, learned of the incident and agreed to bring the keys to the store and bring an employee back to drive Gibbons' car to the store. (R. pp. 116 – 117). Officer Ricky Richards with the Clarendon County Sheriff's Department processed the vehicle for fingerprints. (R. pp. 122-133). Richards testified that he lifted prints from the door jamb on the driver's side and the rear quarter on the driver's side. (R. p. 126, line 19 – p. 127, lines 1-6). Richards found no fingerprints inside the car. (R. p. 134, line 23 – p. 135, lines 1-10). Marie Hodge, a fingerprint examiner with the Sumter Police Department, testified that one of the latent fingerprints found on the outside of the car submitted matched Pearson. (R. p. 170, lines 10-15).

According to Investigator Thomas Ham with the Clarendon County Sheriff's Department, Pearson denied knowing Gibbons, or where he lived and denied ever being at Gibbons' house or place of business. (R. p. 150, lines 5-17). Richard Gamble, however, testified that Pearson helped him with landscaping work at both Gibbons' house and Gibbons' son's house next door. (R. p. 268, line 1 – p. 269, lines 1-25). Gamble, however, was unsure what year Pearson helped with

landscaping at Gibbons' house. (R. p. 273, lines 18-25; p. 278, lines 1-19; p. 269, line 24 – p. 270, line 1).

Gibbons was taken to the hospital where Investigator Ham assisted a nurse in removing the tape from Gibbons' head. (R. p. 142, lines 6-25). The tape was submitted to the South Carolina Law Enforcement Division [SLED] for DNA testing. SLED agent Catherine Leisy testified that DNA from the tape matched the co-defendant, Weldon. (R. p. 291, lines 18-24). According to Investigator Clark with the Clarendon County Sheriff's Department, Pearson and Weldon denied knowing one another. (R. p. 222, lines 8-10). Records from the South Carolina Vocational Rehabilitation Center show that from December 9 -12, 2008, seventeen months before the incident in Gibbons' garage, Pearson and Weldon were both assigned to the wood shop as part of a job readiness training program. (R. p. 280, line 11 – p. 281, lines 1-15). No evidence was presented that Pearson and Weldon were friends or even knew each other as a result of being assigned to the wood shop.

ARGUMENT

The Court of Appeals applied the correct standard of review and correctly found that the trial judge erred in refusing to direct a verdict of acquittal for burglary first degree, armed robbery, grand larceny, kidnapping and possession of a weapon during the commission of a violent crime when the only evidence linking Respondent to the crime scene was a fingerprint found on the victim's vehicle that was stolen at the time of the incident and found about twenty minutes later abandoned in the road with the motor running and evidence that Respondent denied knowing the victim and where he lived despite testimony that Respondent had helped with landscaping work for the victim and his son

At the close of the State's case both Pearson and the co-defendant moved for a directed verdict of acquittal citing State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000), State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004) and State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011). (R. pp. 325 – 339). Counsel for Pearson argued, "There is no evidence of my client being at the scene of the crime, no direct evidence, -- no eyewitnesses and no forensic evidence. My client lived a block and half from the store. My client walks the neighborhood and recently put the fingerprint on the – at the store and no other place." (R. p. 328, lines 9-14). The judge denied the motion. The judge 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.

(R. p. 149, lines 5-17).

The State presented evidence that Pearson's fingerprint was found on the outside of Gibbons' car recovered, abandoned, on a road about twenty minutes after the burglary, robbery, assault and

kidnapping. The evidence is insufficient to place Respondent at the scene of the crime. The judge erred in refusing to direct a verdict of acquittal.

In Bostick, 392 S.C. at 139, 708 S.E.2d at 776-777, the South Carolina Supreme Court wrote:

> A case should be submitted to the jury when the evidence is circumstantial "if there is any substantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced." State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000); see also State v. Williams, 321 S.C. 327, 332, 468 S.E.2d 626, 629 (1996). "The jury weighs the evidence but when there is an absence of evidence, it becomes the duty of the trial judge to direct a verdict...." State v. Schrock, 283 S.C. 129, 134, 322 S.E.2d 450, 452–53 (1984). Evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt. Id. at 133, 322 S.E.2d at 452 (citing State v. Manis, 214 S.C. 99, 51 S.E.2d 370 (1949)). "Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error." State v. Irvin, 270 S.C. 539, 543, 243 S.E.2d 195, 197 (1978) (citing State v. Massey, 267 S.C. 432, 229 S.E.2d 332 (1976)). On appeal of the denial of a directed verdict of acquittal, this Court must look at the evidence in the light most favorable to the State. State v. Martin, 340 S.C. 597, 602, 533 S.E.2d 572, 574 (2000).

The State's case against Respondent was based entirely on circumstantial evidence: 1.) the fingerprint found on the outside of the car; 2.) evidence that Pearson denied knowing Gibbons and denied being at his house despite evidence that he had done landscaping work for Gibbons and his son in the past and 3.) evidence that Pearson denied knowing the co-defendant despite the fact that seventeen months prior they had both been at vocational rehabilitation. Viewing the evidence in the light most favorable to the State, there is not any substantial evidence which reasonably tends to prove the guilt of Pearson or from which is guilt may be fairly and logically deduced. The fingerprint is insufficient to place Pearson at the scene of the crime. There was a

total failure of competent evidence as to the charges alleged. The judge erred in refusing to direct a verdict of acquittal.

A criminal defendant is entitled to a directed verdict if the State fails to place him at the scene of the crime. State v. Arnold, 361 S.C. 386,605 S.E.2d 529 (2004); State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000). If the State's evidence "merely raises a suspicion that the accused is guilty," the court must direct a verdict in his favor. State v. Schrock, 238 S.C. 129, 132, 322 S.E.2d 450, 452 (1984). The three pieces of circumstantial evidence relied upon by the State: 1.) the fingerprint; 2.) Pearson's denial of knowing Gibbons or where he lived; and 3.) Pearson's denial of knowing the co-defendant, barely raise a suspicion. The fingerprint could have been placed on the outside of the car before or after the incident and fails to place Respondent at the scene of the incident. (R. p. 134, lines 6-9). The fact that Pearson denied knowing Gibbons or where he lived fails to place Pearson at the scene of the incident. The fact that Pearson and the co-defendant were in vocational rehabilitation at the same time seventeen months earlier fails to establish that the two knew one another or acted together at the scene of the incident. The evidence fails to place Pearson at the scene of the burglary, robbery, kidnapping, and larceny. Pearson was entitled to a directed verdict of acquittal.

This Court has found fingerprint evidence, even combined with other suspicious factors, insufficient for submission to the jury when the State fails to place the defendant at the scene of the crime, State v. Arnold, 361 S.C. 386, 389, 605 S.E.2d 529, 530-31 (2004), or fails to connect the placement of the fingerprint to the time the crime was committed, State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000). Courts in other jurisdictions have held that fingerprints found on movable items or items open to the public are insufficient to sustain the conviction without evidence that the fingerprints were placed at the time of the crime. See C.E. v. State, 665 So.2d 1097, 1098 (Fla.

Dist. Ct. App. 1996) ("Where fingerprint evidence found on the shattered glass of a vehicle is relied upon to establish identity, the evidence must be such that the print could have been made only when the crime was committed."); Lee v. State, 640 So.2d 126, 127 (1994) (holding fingerprints on broken window pane at burglarized church were insufficient to sustain a conviction); State v. Bass, 278 S.E.2d 209, 212 (N.C. 1981) ("[W]hen the State relies on fingerprints found at the scene of the crime, in order to withstand motion for nonsuit, there must be substantial evidence of circumstances from which the jury can find that the fingerprints could have been impressed only at the time the crime was committed."); United States v. Strayhorn, 743 F.3d 917, 924 (2014) (evidence of a fingerprint on movable object like duct tape insufficient without evidence as to when the fingerprint was placed). As correctly noted by the Court of Appeals, "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." State v. Pearson, 410 S.C. 392, 401, 764 S.E.2d 706, 711 (Ct. App. 2014).

The circumstantial evidence presented by the State in the present case does not reasonably tend to prove Pearson's guilt and fails the Court's well settled directive that circumstantial evidence that is not substantial is insufficient to go to a jury. At best, the State's evidence barely raises a suspicion. As discussed above, a mere suspicion is not sufficient evidence for submission to the jury. The judge should have directed a verdict of acquittal on all charges. The Court of Appeals, viewing the evidence in the light most favorable to the State,

correctly found that the State failed to introduce any substantial circumstantial evidence which reasonably tends to prove the guilt of Pearson or from which is guilt may be fairly and logically deduced. The State's petition for writ of certiorari should be denied.

In the petition for writ of certiorari, the State asserts that the Court of Appeals misapplied the standard of review. The State asserts, "Here, the Court of Appeals seems both: (1) to have applied the wrong, more stringent, test identified by Littlejohn[1] to Respondent's case, and (2) to have substituted its own judgment in place of the jury to conclude that because some other hypothesis could possibly explain the circumstantial evidence tending to prove Respondent's identity as constituted a misapplication of the standard of review in both instances." (petition for writ of certiorari pp. 17-18). Contrary to the State's assertion, the analysis by the Court of Appeals does not require the State to prove guilt to the exclusion of every other reasonable hypothesis. Instead, the Court of Appeals correctly found that the State's evidence failed to place Pearson at the scene of the crime. 'The jury weighs the evidence but when there is an absence of evidence, it becomes the duty of the trial judge to direct a verdict and a corresponding duty is imposed on this Court." State v. Schrock, 283 S.C. 129, 134, 322 S.E.2d 450, 452-53 (1984). It was the duty of the Court of Appeals to reverse the conviction based upon the absence of evidence placing Pearson at the scene of the crimes.

The Court of Appeals applied the correct standard of review. The Court of Appeals correctly held, "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

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[1] State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924 (1955).

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." State v. Pearson, 410 S.C. 392, 402, 764 S.E.2d 706, 712 (S.C. Ct. App. 2014).

The present case is distinguished from State v. Lane, 410 S.C. 505, 765 S.E.2d 557, 557 (2014), where this Court found that the State presented substantial circumstantial evidence of guilt. Importantly, the evidence in Lane placed the defendant at the scene of the crime. A red Mitsubishi Gallant with paper tags and gray primer paint on the front fender was seen parked in the victim's driveway. Lane acknowledged driving a red Mitsubishi Gallant with paper tags and gray primer paint on the front fender on the day of the burglary. Additionally, an unemployment agency document belonging to Lane was found in the victim's driveway. The evidence in Lane constituted substantial circumstantial evidence which reasonably tended to prove guilt or from which guilt could be fairly and logically deduced.

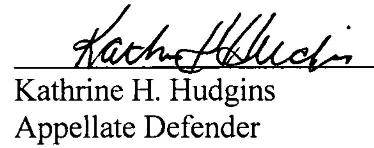
In contrast, the State's evidence in the present case, the fingerprint found on the outside of the car, evidence that Pearson denied knowing Gibbons and denied being at his house despite evidence that he did landscaping work for Gibbons and his son in the past and evidence that Pearson denied knowing the co-defendant despite the fact that seventeen months prior they at both been at vocational rehabilitation does not constitute substantial evidence which reasonably tended to prove guilt or from which guilt could be fairly and logically deduced. "When a motion for a directed verdict is made in a criminal case where the State relies exclusively on circumstantial evidence, the lower court is concerned with the existence or nonexistence of

evidence, not with its weight. State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989). The lower court should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty. Id. The trial judge is required to submit the case to the jury if there is "**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.; State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000) (emphasis added)." State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000). The evidence placing Pearson at the scene of the crimes is nonexistent. The fingerprint evidence, at best, merely raises a suspicion. The Court of Appeals correctly found the State's evidence insufficient for submission to the jury.

CONCLUSION

Based on the above argument, the petition for writ of certiorari should be denied.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR RESPONDENT.

This 22nd day of January, 2015

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Clarendon County

R. Ferrell Cothran, Jr., Circuit Court Judge

THE STATE,

PETITIONER,

V.

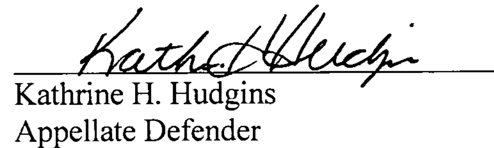
MICHAEL WILSON PEARSON,

RESPONDENT

APPELLATE CASE NO. 2012-212430

CERTIFICATE OF SERVICE

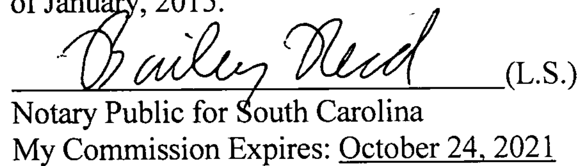
I certify that a true copy of the amended return to petition for writ of certiorari in this case have been served on Jennifer Ellis Roberts, Esquire, this 21st day of January, 2015.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR RESPONDENT

SWORN TO BEFORE ME this 21st day
of January, 2015.


(L.S.)

Notary Public for South Carolina
My Commission Expires: October 24, 2021