

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Laurens County

Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MOLINA ARMSTRONG,

APPELLANT

APPELLATE CASE NO. 2013-000932

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in denying appellant's motion for a directed verdict when the State failed to present any substantial evidence beyond a reasonable doubt that appellant was manufacturing methamphetamine?

STATEMENT OF THE CASE

Appellant was convicted of manufacturing methamphetamine along with a codefendant after a jury trial held before the Honorable Eugene C. Griffith, Jr., on April 9, 2012, in Laurens County. Both appellant and the codefendant were sentenced to 10 years imprisonment. William Mayer, Esquire, represented both of them. Ashley Agnew, Esquire was the assistant solicitor.

This appeal follows.

ARGUMENT

The trial court erred in denying appellant's motion for a directed verdict when the State failed to present any substantial evidence beyond a reasonable doubt that appellant was manufacturing methamphetamine.

Appellant was accused of manufacturing methamphetamine on or about February 15, 2011, at her residence on 644 Happy Valley Road in Fountain Inn. She was tried along with a codefendant, James Dill, Jr. At the conclusion of the State's case, defense counsel moved for a directed verdict on the following grounds:

MR. MAYER: Thank you, Your Honor. Your Honor, I move for a directed verdict. The State has not met the burden of proof in this case. I realize in the light most favorable to the State, looking at the language in the indictments and the language is for both, I would move on behalf of both. The State would have to prove that they willfully, unlawfully and knowingly manufactured, there is no evidence, Your Honor, that anything was manufactured. There is a statement, there is a speculation by the expert that something may have been but there is no testimony that that happened in Laurens County. They estimated there was nothing being manufactured there. There was something laying out on the grass, whether that was used for manufactured or not there is absolutely no testimony that manufacturing took place in Laurens County. Potentially we are told there is a confidential informant that might have provided that information, that individual was not called in this trial. So there is no indication that there was any manufacture. The indictment does go on to talk about to aid, abet, attempt or to conspire to manufacture. And, again, there is no indication that any of that happened supported by testimony either. If manufacture did happen there is absolutely nothing that has been provided that would say my clients had anything to do with it. The only evidence of manufacture in this case is predicated on something by the testimony of the expert was found out in the yard. This is the same expert that said, experienced meth cooks bundle everything up and get rid of it and put it in innocent peoples yard. I think that was the testimony of the expert. Well, we have these people here, no testimony of any drugs found in the house. I specifically asked the Lieutenant and he said, no, there was no drugs in the house. There were not the makings to make meth in the house, no ephedrine, none of the lithium, none of the drain cleaner, nothing. They had benign things in the house which are certainly legal to have and something which we have no idea what it was because it is not photographed, while collected it was destroyed before it could be seen. The one photograph we have is anything but indicative. And it would require speculation on the part of the jurors to say that the manufacture had

happened and that it happened in Laurens County. So with the elements not having been met we would request a directed verdict of not guilty.

(Tr. p. 96, line 8 – p. 98, line 1.) The trial court denied the motion (Tr. p. 170, lines 1-5.) That ruling was in error.

Due process as guaranteed by the Fourteenth Amendment requires “that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof—defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense.” Jackson v. Virginia, 443 U.S. 307, 316, 99 S.Ct. 2781, 2787 (1979).

Our Court has held:

[T]he 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. [Emphasis added].

State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924, 926 (1955); State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989), cert. denied, 493 U.S. 895, 110 S.Ct. 246 (1989).

In applying this standard, our Court has held that evidence which is “sufficient to raise a strong suspicion of the guilt of the accused” is not sufficient to constitute “any evidence from which the guilt of the accused may be fairly and logically deduced.” State v. Totherow, 263 S.C. 275, 210 S.E.2d 228, 230 (1974). See, also, State v. Turner, 117 S.C. 470, 109 S.E. 119, 120 (1921). The motion for a directed verdict should be granted, therefore, “where evidence merely raises a suspicion of guilt, or is such to permit the jury to merely conjecture or to speculate as to the accused’s guilt.” State v. Brown, 267 S.C. 311, 227 S.E.2d 674, 677 (1976), citing State v.

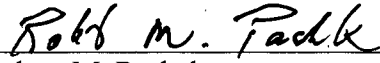
Matarazzo, 262 S.C. 662, 207 S.E.2d 93, cert. denied, 420 U.S. 945 (1974). “If the evidence is consistent with both innocence and guilt it cannot support a conviction.” United States v. Varoz, 740 F.2d 772, 775 (10th Cir. 1984); United States v. Ortiz, 445 F.2d 1100, 1103 (10th Cir 1971). Guilt is only to be found when there is a “rationally supportable state of near certitude.” Evans-Smith v. Taylor, 19 F.3d 899, 906 (4th Cir 1994).

In this case, the evidence was insufficient to show appellant was manufacturing methamphetamine. It required the jury to speculate.

CONCLUSION

A directed verdict should be granted to the charge of manufacturing methamphetamine.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of February, 2015.

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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Transcript.

I certify that this designation contains no matter which is irrelevant to this appeal.

February 11, 2015.

Robert M. Pachak

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 11th day of February, 2015.

Robert M. Pachak
Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 11th day of February, 2015.

Beverly Robinson Brown (L.S.)
Notary Public for South Carolina
My Commission Expires: December 9, 2024.