

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Charleston County

William Jeffrey Young, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

LENARD BRIGHTMAN,

APPELLANT

APPELLATE CASE NO. 2014-000313

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ANDERS BRIEF OF APPELLANT

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ROBERT M. PACHAK  
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ATTORNEY FOR APPELLANT

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AUG 15 2014

**SC Court of Appeals**

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**STATEMENT OF ISSUE ON APPEAL**

Whether the court erred in refusing to grant a directed verdict to the charge of malicious injury to electrical utility systems when the State failed to present any substantial evidence beyond a reasonable doubt that the electrical utility system was fully functional?

## STATEMENT OF THE CASE

Appellant was convicted of malicious injury to electric utility systems after a jury trial held before the Honorable W. Jeffrey Young on February 5 – 6, 2014, in Charleston County. A ten (10) year sentence was imposed. John Kowalski, Esquire, represented appellant. Spencer Crompton, Esquire, and Kelly Flynn Young, Esquire, were the assistant solicitors.

This appeal follows.

## ARGUMENT

The court erred in refusing to grant a directed verdict to the charge of malicious injury to electrical utility systems when the State failed to present any substantial evidence beyond a reasonable doubt that the electrical utility system was fully functional.

The indictment charging appellant with malicious injury to electrical utility systems read as follows:

That in Charleston County, on or about March 9, 2011, the defendant, LENARD BRIGHTMAN, did destroy, damage, or injure a telegraph, telephone, electric utility system, satellite dish, or cable television system, including poles, cables, wires, fixtures, antennas, amplifiers, or other apparatus, equipment, or appliances, or did obstruct, impede, or impair their services or transmissions or did aid, agree with, employ, or conspire with a person to do or cause to be done any of the aforementioned acts. This is in violation of Section 16-11-740 of the South Carolina Code of Laws (1976) amended.

The electric utility system in this case was a substation owned by South Carolina Electric & Gas Company (SCE&G). Lt. Ponder testified that he was employed with Coastal International Security, who did contract security for SCE&G. On March 9, 2011, he got a call from dispatch that an alarm was going off inside a substation. He went to investigate and saw appellant up on one of the transformers with a hacksaw cutting copper wiring.<sup>1</sup> (R. p. 78, line 3 – R. p. 81, line 23). On that day, the substation was not functioning at full capacity. Half of it was closed down for maintenance. (R. p. 88, lines 7 –

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<sup>1</sup> He never saw the suspect's face. (R. p. 123, lines 12 – 13).

12). Later at trial, Bonita Benton with corporate security at SCANA, the parent company of SCE&G, testified that the substation still had parts under construction. (R. p. 221, lines 19 – 23).

After the close of the State’s case, defense counsel moved for a directed verdict because the State failed to prove that the substation was in proper working condition and it was not functioning as an electrical utility so there could be no malicious injury to it. The trial court denied that motion. (R. p. 231, line 2 – R. p. 232, line 17). 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 (10<sup>th</sup> Cir. 1984); United States v. Ortiz, 445 F.2d 1100, 1103 (10<sup>th</sup> 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 (4<sup>th</sup> Cir 1994).

As can be seen from the facts of this case, the State has failed to prove its case.

CONCLUSION

Appellant's conviction should be reversed.

Respectfully submitted,

*Robert M. Pachak*

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Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of August, 2014.

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William Jeffrey Young, Circuit Court Judge

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PETITION TO BE RELIEVED AS COUNSEL

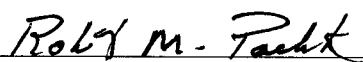
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Counsel for Lenard Brightman states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge William Jeffrey Young, which was held on February 6, 2014, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Lenard Brightman.

Respectfully submitted,

  
Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of August, 2014.

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

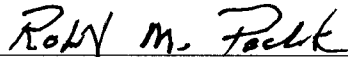
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Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Entire Trial Transcript (February 5 – 6, 2014)

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

August 15th, 2014



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Robert M. Pachak  
Appellate Defender

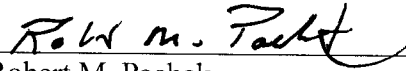
South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

August 15, 2014

  
\_\_\_\_\_  
Robert M. Pachak  
Appellate Defender

S.C. Commission on Indigent Defense  
Division of Appellate Defense  
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Post Office Box 11589  
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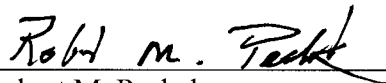
APPELLANT

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CERTIFICATE OF SERVICE

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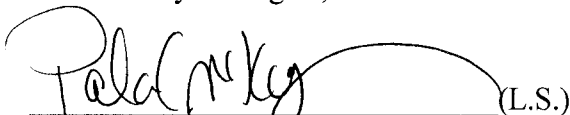
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Lenard Brightman, #139685 at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 15th day of August, 2014.



Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 15th day of August, 2014.



(L.S.)  
Notary Public for South Carolina  
My Commission Expires: July 24, 2022.

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AUG 15 2014

**SC Court of Appeals**