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THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MARTIN DAMEON FLOYD,

APPELLANT

APPELLATE CASE NO. 2013-002736

Appeal from Dorchester County

Maite Murphy, Circuit Court Judge

Opinion No. 2015-UP-362

PETITION FOR REHEARING

On July 15, 2015, this Court affirmed Appellant Martin Dameon Floyd's conviction for first degree burglary in an unpublished opinion. Floyd respectfully petitions the Court for a rehearing of its Unpublished Opinion No. 2015-UP-362 pursuant to Rule 221(a), SCACR, based upon the following points overlooked or misapprehended by the Court:

On appeal, Floyd argued that the trial court erred in denying his motion for directed verdict on the charge of first degree burglary where the State failed to present any direct evidence or substantial circumstantial evidence of his intent to commit a crime within the trailer when he entered it. Additionally, Floyd argued that he was entitled to a directed verdict because the State did

not prove that the property he entered qualified as a dwelling where the sole owner of the property was deceased at the time of entry.

Failure to Prove Intent to Commit a Crime

This Court erred in affirming Floyd's conviction for first degree burglary where that State failed to present any direct evidence or substantial circumstantial evidence of Floyd's intent to commit a crime when he entered the trailer, even viewing the evidence in the light most favorable to the State. See S.C. CODE ANN. § 16-11-311 ("A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling . . . . .").

The State theorized that Floyd and his three co-defendants, Angela Fleeman, Rusty Norris, and Candace Mauldin, went to the trailer of Charles Rearick to burglarize it after Floyd learned of Rearick's unexpected death earlier that day.[1] Specifically, the State alleged that Floyd intended to steal a gun collection that was no longer in the trailer when they arrived. However, the State did not present substantial circumstantial evidence support its theory. Rather, their theory was based on conjecture and raised only a mere suspicion of Floyd's guilt.

"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)). "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) (emphasis added). "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)

[1] Rearick died after suffering a heart attack while driving, causing him to collide with another vehicle.

(emphasis added). "'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 State v. Bostick, 392 S.C. 134, 139-41, 708 S.E.2d 774, 777-78 (2011), our Supreme Court began its analysis with a review of "three seminal cases from our jurisprudence analyzing the proof necessary in cases with circumstantial evidence," which included State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984),State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004), and State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000). Each of those cases resulted in reversal and remand for entry of judgment of acquittal because the State failed to produce substantial evidence to overcome the motion for directed verdict. 392 S.C. at 139-41, 708 S.E.2d at 777-78. The court likewise determined that the evidence presented in Bostick "raised only a suspicion of guilt." Id. at 141, 708 S.E.2d at 778. Bostick was convicted of the murder of his neighbor, Polite, who died from carbon monoxide resulting from the arson of her home after she evidently suffered blunt force trauma to her head. Id. at 136-37, 708 S.E.2d at 775. The court found that there was no direct evidence against Bostick and the circumstantial evidence consisted of "(1) Polite's car keys, calculator, and other items from her home were found in the Bostick family's burn pile; (2) the fire in the burn pile was accelerated with either kerosene or diesel fuel, and Bostick's mother did not use those accelerants when she burned things in the pile; (3) Bostick had a pattern that matched gasoline on his shoes and gasoline was the accelerant used for the house fire; and (4) while the DNA from the blood found on Bostick's jeans excluded about ninety-nine percent of the population, the blood could not be matched to Polite's DNA." Id. at 141-42, 708 S.E.2d at 778. The court noted that the State did not introduce the weapon used to beat Polite in the head or any evidence concerning Bostick's knowledge that Polite may have had

money in the briefcase. Id. at 142, 708 S.E.2d at 778. The court found that, at most, this evidence raised only mere suspicion that Bostick committed the murder. Id. It accordingly found that the trial court erred in failing to direct a verdict in Bostick's favor. Id.

Shortly after Bostick, the Supreme Court noted in State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011), that it 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." The court held that the circumstantial evidence presented in Odems' case did not reasonably tend to prove his guilt, and thus failed the "***well-settled directive*** that circumstantial evidence that is not substantial is insufficient to go to a jury." 395 S.C. at 592, 720 S.E.2d at 53 (emphasis added). The primary pieces of circumstantial evidence against Odems were: "(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 fled from law enforcement; and (3) Petitioner asked an uninvolved person to lie for him." Id. at 588, 720 S.E.2d at 51. The court found that even though Odems' overall actions may have appeared suspicious, mere suspicion is insufficient to support a guilty verdict. Id. at 590, 720 S.E.2d at 52.

The State argued that criminal intent in a burglary case can be proven by a defendant's actions after he entered a dwelling. See State v. Pickney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000) ("In a burglary trial, the defendant's actions after he entered the house can be evidence used to determine if he had the intent to commit a crime at the time of entry."). The State then pointed to the following as evidence of Floyd's intention to commit a crime within the dwelling in the present case:

(1) The entry occurred at night without permission from Rearick (who was deceased) or anyone else to come inside;

(2) Floyd had not lived in Rearick's trailer in months and did not have a key to the trailer;

(3) Floyd and the co-defendants entered through a back window;

(4) Floyd's co-defendant, Norris, was "armed with tools commonly used in burglaries, such as bolt cutters, gloves, and a flashlight;"

(5) Floyd searched Rearick's home, beginning in Rearick's master bedroom, looking for items such as Rearick's valuable gun collection;

(6) Floyd did not collect items belonging to him and his infant daughter that were found in the bedroom where Floyd previously resided;

(7) Floyd's co-defendant, Norris, took various items from Rearick's home;

(8) Floyd and his co-defendants amassed Rearick's belongings on the kitchen table, presumably for easy transport and proceeded to "ransack the home;"

(9) Floyd and Norris removed the plywood and lock on the back shed and took various items; and

(10) Two of Floyd's co-defendants fled when police arrived.

Final Brief of Respondent, p. 11-13. However, many of these averments cannot be "fairly and logically deduced" from the evidence or are wholly contrary to the evidence. See Pickney, 339 S.C. at 349, 529 S.E.2d at 527. Further, even an evaluation of the evidence in the light most favorable to the State cannot require that the evidence be viewed in a complete vacuum.

The State presented the testimony of co-defendants Angela Fleeman and Rusty Norris, both of whom went to Rearick's trailer with Floyd on the night of the alleged burglary. They both testified that Floyd's intention in going to the trailer was to secure some of his property that was left there, including items from when he used to live with Rearick and tools from remodeling work that he was continuing to do around Rearick's trailer. R. 29, l. 24 – 30, l. 24; R. 38, l. 23 – 39, l. 11; R. 60, ll. 2-22. Rearick's daughter, Jennifer Felkel, confirmed that Floyd used to reside with Rearick and did remodeling work for him. R. 105, l. 22 – 106, l. 12. Detective Stephanie Stover confirmed that there appeared to be a lot of remodeling construction going on inside the trailer when she viewed it on the night of the alleged burglary. R. 80, ll. 14-18. Admittedly, the entry into the trailer occurred at nighttime and Candace Mauldin, Norris' girlfriend, entered through an unlocked

window in the back of the trailer and let the other three in through the front door. R. 17, ll. 11-19; R. 30, l. 25 – 31, l. 3; R. 40, ll. 2-14. Though Floyd did not contact the family to ask permission to enter, Floyd indicated to his co-defendants that there would not be any problem with them going to the trailer that night, stating that he had a close relationship with Rearick's ex-wife. He also expressed an intention to remain there for the night once he became concerned that a third party had robbed Rearick's trailer before they arrived. R. 49, l. 19 – 50, l. 6.

The State averred that Floyd searched Rearick's home, beginning in Rearick's master bedroom, looking for items such as Rearick's valuable gun collection. However, the actual testimony presented was that Floyd showed his co-defendants the work he had done on Rearick's master bathroom. In doing so, they walked through the master bedroom. Fleeman recalled that as they were heading to the bathroom initially, Floyd looked under Rearick's mattress and in the closet for guns that he believed Rearick stored there. She testified that Floyd thought someone had stolen the guns and that he was "upset and disgusted." R. 22, l. 7 – 23, l. 7; R. 31, ll. 9-15. Floyd suspected that his brother, Jimmy, may have taken the guns.[2] R. 34, l. 22 – 35, l. 5. Fleeman testified that the photograph of the master bathroom appeared as she remembered it, but that the photograph depicting the room where Floyd used to stay was "a lot more messier [sic]" than she remembered. R. 19, l. 21 – 20, l. 2. Norris testified that Floyd mentioned that Rearick was a gun collector and that there may be some guns in the house, but that they were not there looking for a gun collection. Rather, Floyd was looking for his own possessions. R. 41, ll. 4-23. Norris said that due to the empty gun cabinet and a missing piece of welding equipment, they surmised that someone else may have been there and stolen the items. R. 41, l. 17 – 42, l. 3.

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[2] Rearick's daughter, son-in-law, ex-wife, and family friend had come to Rearick's trailer earlier that day and collected Rearick's guns along with other items. R. 94, l. 20 – 95, l. 7.

They then looked at the room where Floyd had stayed when he lived there, where there were some of his clothes and his daughter's bottle at the foot of the bed. They returned to the living room and discussed the other renovation projects that Floyd had intended to work on for Rearick. R. 17, l. 19 – 18, l. 19; R. 21, ll. 3-10; R. 23, l. 22 – 24, l. 9. They all left through the front door, at which point Fleeman was unsure where Floyd and Norris went while she and Mauldin returned to the truck. R. 24, ll. 9-21. Floyd returned the truck, at which point Mauldin went behind the trailer with Norris. Floyd and Fleeman discussed whether he should stay at the trailer "to make sure no one came there to try to rob Mr. Charlie [Rearick]." The police then arrived. R. 25, ll. 2-24.

Despite the State's use of the word "ransack" in its brief, that word was never used at the trial and is not supported by the evidence. There was testimony that some drawers were open and items were on the kitchen table that had not been there earlier that day, but nothing to the extent of the image that the State has attempted to portray. R. 96, ll. 18-24; R. 99, ll. 12-24; R. 112, l. 21 – 114, l. 12. With respect to the gun case that was lying on the floor of the master bedroom, Kevin Felkel, Rearick's son-in-law, testified that he removed the gun from inside of the case earlier that day. R. 96, ll. 8-13. It is hardly surprising that a soft-sided gun case could fall over without any gun inside. R. 82, l. 20 – 83, l. 3.

The State also pointed to the conduct of Floyd's co-defendant, Norris, despite presenting no evidence that any of Norris' conduct was actually even known to Floyd. Norris admitted that he took several items from around Rearick's home and shed and placed them in the large pockets of his Carhartt jacket. Those included maple wood stain or filler, an air grinder attachment for an air compressor, a Navy whistle, an Accu-Chek blood pressure and glucose monitor, scissors, a belt, and three unidentified pills. There was no evidence that Floyd had any knowledge that Norris took these items, all of which were found concealed in Norris's jacket when he was handcuffed by

police. R. 50, l. 22 – 51, l. 5; R. 52, 21 – 58, l. 11; R. 66, ll. 3-13. The State also pointed to Norris' being "armed with tools commonly used in burglaries, such as bolt cutters, gloves, and a flashlight." Again, there was no indication that Floyd was aware that Norris had those items. Norris apparently did not make use of his flashlight when they arrived at trailer, as he hit his leg on trailer while walking the dark. R. 49, ll. 1-7. Both the flashlight and gloves were found in Norris' coat. R. 52, ll. 3-20. Further, Norris testified that he was initially at the shed alone. Floyd came back and pointed out a table saw and floor nailer that were his, which could be seen through cracks in the wood. Floyd went around to the front of trailer to talk to Fleeman. While Floyd was out front, Norris decided, on his own, to use his bolt cutters and cut the lock off of the shed. R. 42, l. 4 – 43, l. 10. Thus, the State's averment that "Appellant and Norris then proceeded to the shed, secured with nailed down plywood and a lock, which they forcibly removed, and took various items" is an inaccurate portrayal of the evidence.

The only items actually collected from Floyd himself were a scrap metal receipt, a pen shell, and a silver pocketknife. R. 70, ll. 10-20. The items located in Mauldin's red truck included some pillows, a shop vac, a painting, and a computer program box. R. 79, ll. 6-22. Floyd's mother testified that the painting found in the back of truck was drawn by Floyd. R. 130, ll. 1-18. Otherwise, there was no evidence presented to connect or even suggest that these items were obtained from Rearick's residence. The State also pointed to Floyd's alleged failure to collect items belonging to him and his infant daughter that were found in the bedroom where he previously resided. However, in comparison to his tools, Floyd's clothing and child's cup are hardly the type of items that warrant concern over securing. Further, Floyd was still on the property and according to the State's witnesses, Norris and Fleeman, Floyd was considering staying in the trailer overnight to prevent a robbery.

Lastly, the State noted the flight of two of Floyd's co-defendants when the police arrived. Neither Floyd nor Fleeman ran when the police arrived. R. 31, l. 19 – 32, l. 2; R. 71, l. 25 – 72, l. 9. When they saw the police lights, Floyd told Freeman "Don't freak out . . . . [I]t's the law. We're not doing anything wrong. We're fine." R. 25, l. 17-24. Mauldin, however, ran into the woods because she was on probation. Norris began to follow her, but he instead squatted down in the woods near the shed and was later found there by police. R. 11-25. Norris' differing reaction from Floyd and Freeman was likely due to the fact that he had been pilfering small items from inside the house and shed and had them hidden in his jacket. R. 50, l. 22 – 51, l. 5; R. 52, 21 – 58, l. 11; R. 66, ll. 3-13. While one's own attempt to flee may be evidence of your consciousness of guilt, a co-defendant's flight should not support such an inference with respect to another co-defendant. See State v. Martin, 403 S.C. 19, 742 S.E.2d 42 (Ct. App. 2013) ("A court assessing evidence of flight must determine whether the totality of the evidence creates an inference that **the defendant** had knowledge that he was being sought by the authorities." (citing State v. Pagan, 369 S.C. 210, 209, 631 S.E.2d 262, 266) (emphasis added)). Floyd himself did not flee.

Thus, considering only the actual evidence presented and the reasonable inferences therefrom, the State failed to present substantial circumstantial evidence that Floyd intended to commit a crime inside of the trailer. Rather, at most, the evidence showed that the entry occurred in the nighttime, through a back window, and that some items were gathered on the kitchen table and some drawers were left open. A majority of the State's evidence related to the conduct of Floyd's co-defendant, Norris. However, there was no evidence that Norris' conduct was anticipated by or known to Floyd. Notably, the State did not request a "hand of one, hand of all" instruction. R. 175, l. 17 – 186, l. 1. Furthermore, if the intent to commit a crime is formed after the entry, there is no burglary. R. 183, ll. 15-17.

"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). Here, it was the duty of the trial judge to grant the motion for directed verdict because, even viewing the circumstantial evidence in the light most favorable to the State, it did not reasonably tend to prove Floyd's guilt and fails our Supreme Court's well settled directive that circumstantial evidence that is not substantial is insufficient to go to a jury. At best, this evidence raises a suspicion of guilt. As discussed above, a mere suspicion is not sufficient evidence for submission to the jury.

Thus, the trial judge and this Court erred in concluding that the State presented substantial circumstantial evidence that Floyd committed first degree burglary. Floyd was accordingly entitled to a directed verdict.

Failure to Prove Trailer Qualified as a Dwelling

This Court erred in affirming Floyd's conviction for first degree burglary where the sole owner of the property entered upon was deceased at the time of entry. The question of whether a prior residence constitutes a dwelling after the sole owner dies is an issue of first impression in South Carolina. South Carolina's first degree burglary statute is aimed at protecting occupants inside a dwelling who could be harmed when intruders break in with intent to commit a crime inside. Where the sole occupant is deceased, and such is known to the alleged burglars, this purpose cannot be accomplished.

A person is only guilty of first degree burglary if the person enters a "dwelling." S.C. CODE ANN. § 16-11-311. In S.C. CODE ANN. § 16-11-10, "dwelling" is defined as:

> With respect to the crimes of burglary and arson and to all criminal offenses which are constituted or aggravated by being committed in a dwelling house, any house, outhouse, apartment, building, erection, shed or box in which there sleeps a proprietor, tenant, watchman, clerk, laborer or person who lodges there with a view

> to the protection of property shall be deemed a dwelling house, and of such a dwelling house or of any other dwelling house all houses, outhouses, buildings, sheds and erections which are within two hundred yards of it and are appurtenant to it or to the same establishment of which it is an appurtenance shall be deemed parcels.

§ 16-11-10. Under S.C. CODE ANN. § 16-11-310(2), a "dwelling" also means "the living quarters of a building which is used or normally used for sleeping, living, or lodging by a person."

In State v. Ferebee, 273 S.C. 403, 257 S.E.2d 154 (1979), our Supreme Court reversed the trial court's denial of Ferebee's motion for directed verdict based on the State's failure to prove that the property constituted a dwelling house. In Ferebee, the apartment where the incident took place was part of a duplex owned by a doctor and leased through a local real estate company. 273 S.C. at 404-05, 257 S.E.2d at 155. The former tenants vacated the premises one week prior to the incident and that side of the duplex was advertised for rent. Id. The court recognized that while "the temporary absence of occupants will not prevent a residence from becoming the subject of a burglary, it is required that such occupants leave with the purpose of returning in order for a breaking and entering during their absence to constitute burglary." The mere fact that a building is suitable for use as a dwelling is insufficient. The court further noted that "[t]he rationale for requiring that an identifiable occupant reside and sleep within the dwelling rests upon the development of burglary as an offense against habitation rather than against property." Id. In State v. Singley, 392 S.C. 270, 274, 709 S.E.2d 603, 605 (2011), our Supreme Court reiterated that position, stating: "We have maintained consistently for well over one hundred years that burglary is a crime against possession and habitation, not a crime against ownership."

Appellant's brief cited to decisions in other jurisdictions that held that when a property is left vacant by the death of its sole owner and occupant, the property could not be considered a dwelling for the purposes of the offense of burglary. People v. Hider, 351 N.W.2d 905, 906-08

(Mich. Ct. App. 1984) (holding that where occupant died the day before the breaking and entering, the property was not an occupied dwelling at the time of the crime because the deceased occupant's absence could hardly be considered temporary); People v. Ramos, 52 Cal. App. 4th 300, 301 (Cal. Ct. App. 1997) (holding that house was not inhabited as required to sustain a conviction for first degree burglary where the occupant of the house was deceased at the time of the defendant's entry, having died at his home from natural causes on the very day of the breaking and entering).

The Court of Appeals for North Carolina also held that a second degree arson charge should have been dismissed upon evidence that former occupants of the trailer were permanently absent from the trailer at the time it burned. State v. Ward, 379 S.E.2d 251 (N.C. Ct. App. 1989). One occupant had permanently abandoned the trailer, and the other died several days before the trailer was burned. The court held: "While temporary absence from a dwelling will not affect its status as an inhabited dwelling, the inhabitant's death certainly renders it uninhabited since someone must 'live' in a dwelling for it to be 'inhabited.'" Id. at 253-54. Similar to the "offense against habitation" rationale announced by our Supreme Court in Ferebee, the Ward court recognized that the main purpose of common law arson was to protect against danger to those persons who might be in the dwelling house when it is burned. Id. at 253; see Ferebee, 273 S.C. at 406, 257 S.E.2d at 155.

The Virginia Court of Appeals has explained a similar rationale behind its burglary statute, stating:

> Burglary laws are based primarily upon a recognition of the dangers to **personal safety** created by the usual burglary situation-the danger that the intruder will harm the occupants in attempting to perpetrate the intended crime or to escape and the danger that the occupants will in anger or panic react violently to the invasion, thereby inviting more violence. The laws are primarily designed, not to deter the trespass and the intended crime, which are prohibited by other laws, so much as to forestall the germination of a situation **dangerous to personal safety**.

Rash v. Commonwealth, 383 S.E.2d 749, 751 (Va. Ct. App. 1989) (internal citations omitted) (emphasis added). The dissenting opinions in People v. Barney, 742 N.Y.S.2d 451 (N.Y. App. Div. 2002) (Green & Hurlbutt, JJ.) and Cochran v. Commonwealth, 114 S.W.3d 837 (Ky. 2003) (Cooper, Keller, & Stumbo, JJ., dissenting in part and concurring in part) also cited the purpose behind their state's burglary statutes as the basis for their disagreement with the majority decisions to uphold the burglary convictions where the occupants were deceased prior to the breaking and entering.

In Barney, the dissent concluded that "upon the death of its sole occupant, the building at issue lost its character as a dwelling" as defined in the burglary statute. 742 N.Y.S.2d at 453-54. They noted that even in the common law definition of burglary, "[t]he requirement that the structure unlawfully entered be a dwelling was crucial because common-law burglary found its theoretical basis in the protection of man's right of habitation." Id. at 454. Despite its "statutory expansion and refinement," the dissent found that "the crime of burglary has never lost its theoretical underpinnings as an offense against habitation." Id. "From at least the time of Blackstone, burglary of a dwelling has been considered among the most serious crimes because of the midnight terror excited, and the liability created by it of danger to human life, growing out of the attempt to defend property from depredation." Id. at 455. The Barney dissent thus found that while the structure was adapted for occupancy, it had no present or prospective occupant where the sole occupant died three days prior to the breaking and entering and the owner lived elsewhere and did not intend to use the house as her residence. Id. Thus, the dissent would have reduced the conviction for second degree burglary to third degree burglary. Id. at 456.

In Cochran, the dissenters found it obvious that the legislature "did not classify the burglary of a dwelling as a more serious offense than the burglary of a building because of its structure or

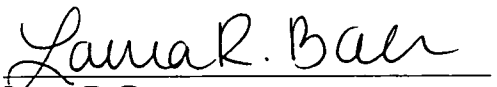
contents." 114 S.W.3d at 841. They found that the higher classification was instead a reflection of "the greater danger inherent in the burglary of a building usually occupied by a person lodging therein, *i.e.,* that the person usually lodging therein might be killed or injured while defending against the depredation." Id. (internal quotations omitted). They also noted that the victim's absence in Cochran was not temporary and that he could not have intended to return since he was deceased. Id. at 842.

In the present case, there was no identifiable occupant of the trailer when Floyd entered it because Rearick was deceased. Whether Rearick had any intent to return could not be determined because he was no longer able to entertain any type of intent. Further, the rationale under the first degree burglary statute for protecting occupants was absent with respect to the trailer when Rearick died. Therefore, the State failed to prove an essential element of the crime of first degree burglary. The trial court and this Court erred in concluding that the State presented evidence that the trailer was a dwelling after Rearick's death. Floyd was accordingly entitled to a directed verdict.

CONCLUSION

For the reasons set forth herein, Appellant Martin Dameon Floyd respectfully requests that the Opinion of the Court of Appeals be withdrawn and that this Court enter a directed verdict of acquittal (Issue I and II), or at a minimum reduce the conviction to third degree burglary, as defined in S.C. CODE ANN. § 16-11-313, and remand for resentencing (Issue II). See State v. Muldrow, 348 S.C. 264, 269, 559 S.E.2d 847, 850 (2002) ("Where the evidence is insufficient to sustain a conviction on the greater offense but is legally sufficient to support a conviction on the lesser, the Court on appeal may direct the entry of judgment on the lesser offense.").

Respectfully submitted,



Laura R. Baer
Appellate Defender

This 29th day of July, 2015.

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THE STATE,

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MARTIN DAMEON FLOYD,

APPELLANT

APPELLATE CASE NO. 2013-002736

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Megan Harrigan Jameson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 2920, and Martin D. Floyd, Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 29th day of July, 2015.

Laura R. Baer

Laura R. Baer
Appellate Defender
ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 29th day
of July, 2015.

Bailey Wolfe (L.S.)
Notary Public for South Carolina
My Commission Expires: October 24, 2021.