

ORIGINAL

STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY

Court of General Sessions

Benjamin H. Culbertson, Circuit Court Judge

RECEIVED

JUL 14 2015

SC Court of Appeals

Appellate Case No. 2014-002022

THE STATE,

Respondent,

v.

JAMAR ANTONIO HUGGINS,

Appellant.

**FINAL BRIEF OF RESPONDENT**

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## STATEMENT OF ISSUE ON APPEAL

The trial court properly denied Appellant's motion for a directed verdict where the State presented substantial direct and circumstantial evidence from which the jury could fairly and logically find Appellant guilty of each charge.

## STATEMENT OF THE CASE

An Horry County Grand Jury indicted Appellant for first-degree burglary, armed robbery, and kidnapping. (R 109-114.) On September 15-17, 2014, Appellant proceeded to a trial before the Honorable Benjamin H. Culbertson and a jury. John Reuben Long, III, Esquire, represented Appellant, and Assistant Solicitor Donna Elder, Esquire, represented the State. The jury found Appellant guilty of all charges, and Judge Culbertson sentenced him to fifteen years' imprisonment for first-degree burglary, fifteen years' imprisonment for kidnapping, and ten years' imprisonment for armed robbery, to be served concurrently. (R. 103, 107.)

On September 18, 2014, Appellant filed a Notice of Appeal.

## STATEMENT OF FACTS

On December 20, 2012, Angela Eckler (Victim) heard a knock at her door in the middle of the night. (R. 28, lines, 13-14; R. 30, lines 5-12; R. 30, line 25-R. 31, line 1.) Thinking it was a friend she calls Grandma, she opened the door to find a well-dressed woman. (R. 31, lines 5-15.) As she turned to quiet her dog, two men entered the house as the woman ran off. (R. 31, lines 16-25.) The two men demanded money and held her captive in her bathroom. (R. 32, line 8-R. 33, line 16.) From the bathroom, she could hear her daughter telling the men the only money she had was her birthday money in her purse on the table, and then the men pushed her daughter into the bathroom. (R. 33, lines 11-19.) After the men left, Victim drove herself and her twelve-year-old daughter to the police department. (R. 34, lines 1-9.) She was unable to identify the men but was able to identify the woman. (R. 35, lines 2-12.) The police also talked to Victim's fiancé, who identified the woman who came to the door based on the description given. (R. 60, line 12-R. 61, line 8.) That woman, Deaungela Montgomery, then led the police to Appellant and he was arrested and charged with first-degree burglary, armed robbery, and kidnapping. (R. 61, line 16-R. 62, line 22; R.109-114.)

At trial, the State called Deaungela Montgomery. (R. 12, lines 13-21.) At the time of her testimony, she was incarcerated for two counts of armed robbery. (R. 13, lines 2-9.) She testified she was not offered anything from the State to testify at Appellant's trial, nor did she receive assistance from the State when sentenced for the crime in this case. (R. 13, line 19-R. 14, line 5.) When asked whether she recalled telling a detective that a man named Junk was with her during the crime and picking him out in a photograph, she stated that she assumed it was Junk but did not know him. (R. 15, lines 14-18.) When asked about giving a statement to police, she testified she probably did but

did not know because she “can’t really remember nothing.” (R. 15, line 22-R. 16, line 3.) Then she testified, “I remember the name [Junk]. So, yes, I did make the statement, but what I’m telling you is this is not the same person.” (R. 16, lines 4-8.) Montgomery testified she did not remember describing Junk to police as far as his height and the fact that he had long dreads, but she did recall saying he had hair and a grill in his mouth. (R. 16, line 13-R. 17, line 2.) She testified she recalled describing where Junk lived and telling police the car they drove to Victim’s house belonged to Appellant and that Appellant drove it there and then went into Victim’s house wearing a mask and carrying a weapon. (R. 17, lines 9-25.) She recalled giving a statement that she went to Victim’s house and knocked on the door. (R. 18, lines 18-20.) Montgomery testified that when Victim opened the door, she asked if Dre was there and Victim answered that he was not. (R. 18, line 24-R. 19, line 1.) Montgomery stated she walked back to the car and the two men, Appellant and another man, went into the house. (R. 19, lines 1-9.)

Montgomery stated that Junk went with her to Victim’s house, but that Appellant did not look like the same person because his hair was different. (R. 25, lines 4-15.) On cross-examination, defense counsel asked Montgomery if Appellant was not the person who invaded the home with her, and she said no. (R. 26, lines 2-7.) On redirect, she clarified that she identified Junk as the person but did not know Junk’s real name. (R. 26, lines 12-20.) When asked whether she identified the person in a picture a detective showed her as Junk, she testified she believed the picture was already circled when it was shown to her. (R. 27, lines 1-5.) However, she did agree she had identified that person as Junk. (R. 27, lines 6-9.) On the other hand, she then stated she did not know whether that was the person who went into Victim’s house, and when asked whether he was the person who drove the car to Victim’s house, she said he was not. (R. 27, lines 10-15.)

Nevertheless, she then once again testified the person she identified to the detectives was Junk, and the trial court struck the answer as asked and answered in response to an objection by Appellant. (R. 27, lines 19-23.)

Outside the presence of the jury, the State asked to impeach Montgomery by allowing publication of her statement taken by a detective who was about to testify. (R. 40, line 23-R. 41, line 2.) The trial judge expressed doubt that the State could now bring in the statement with another witness, indicating it should have done so while Montgomery was on the stand. (R. 42, lines 6-10.) The State then asked if it could at least ask the detective if he showed Montgomery the photograph and whether she identified the person as Junk. (R. 42, lines 11-14.) After much discussion, the trial court did not allow the statement to come in because Montgomery admitted to making the statement. (R. 55, lines 8-16.)

Detective Jonathan Martin with the Horry County Police Department testified he met with Victim at her home a few days after the incident. (R. 58, lines 1-11.) He spoke to Victim's fiancé, Adrian (also known as Dre and Drake), who identified Montgomery. (R. 60, line 10-R. 61, line 2.) He interviewed Montgomery and developed Appellant as a suspect. (R. 61, line 13-R. 62, line 5.) Montgomery identified Appellant as Junk and described him in detail—long hair, early 30s, black male, grill in his teeth—and also where he lived and the vehicle he drove. (R. 62, lines 3-14.) By the description of the house, Detective Martin was able to locate it and connect both the house and the vehicle to Appellant. (R. 62, lines 15-18.)

On cross-examination, Detective Martin testified Montgomery told him she uses crack cocaine, but he did not know she was a crack addict. (R. 66, lines 9-23.) He stated that he told Montgomery she could help herself by identifying the other parties involved

but did not mention Appellant. (R. 67, lines 17-21.) He testified he had not heard Appellant's name until Montgomery provided the information. (R. 74, lines 20-23.) He further stated he never pointed out anybody for her to identify and that she was the one who identified Appellant as a suspect. (R. 67, line 25-R. 68, line 9.)

After the State rested, Appellant moved for a directed verdict, arguing the evidence merely raised a suspicion of guilt. (R. 75, lines 23-24; R. 79, lines 3-6.) He argued Montgomery stated she was lying and testified Appellant was not involved in the crime. (R. 79, lines 7-11.) The State argued she described Appellant to detectives even though she now testified he did not look like the same person. (R. 76, lines 2-18.) Further, the State emphasized that Montgomery's credibility would be up to the jury to determine when weighing her testimony. (R. 77, line 9-R. 78, line 13.) After a brief recess, the trial court denied the directed verdict, basing it on his duty to look for the existence of evidence rather than weight. (R. 80, lines 13-23.) He noted that Montgomery admitted to making the prior statements and determined that the fact that she testified she lied was a jury issue. (R. 80, lines 17-23.)

Ultimately, the jury found Appellant guilty of all charges, and the trial court sentenced him to fifteen years' imprisonment for first-degree burglary, fifteen years' imprisonment for kidnapping, and ten years' imprisonment for armed robbery, to be served concurrently. (R. 103, 107.)

## ARGUMENT

**The trial court properly denied Appellant's motion for a directed verdict where the State presented substantial direct and circumstantial evidence from which the jury could fairly and logically find Appellant guilty of each charge.**

Appellant argues the trial court erred in refusing to grant a directed verdict, claiming the State failed to present substantial evidence beyond a reasonable doubt as to his identity because the identity witness was not credible. On the contrary, the trial court properly denied Appellant's motion for a directed verdict because direct evidence existed that identified Appellant as one of the intruders. The trial court correctly submitted the case to the jury for its resolution, and this Court should affirm its decision.

“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. “If there is *any direct evidence* or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, this Court must find the case was properly submitted to the jury.” Id. at 292-93, 625 S.E.2d at 648 (emphasis added). The trial court should grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty. State v. Hernandez, 382 S.C. 620, 625-26, 677 S.E.2d 603, 605-06 (2009). A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. State v. Ladner, 373 S.C. 103, 120, 644 S.E.2d 684, 693 (2007).

After a trial court properly has determined a witness is competent, the resolution of the credibility of the witness is within the province of the jury. State v. Ingram, 266

S.C. 462, 468, 224 S.E.2d 711, 713 (1976) overruled on other grounds, State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991). “[T]his Court has more than once held that the jury is the judge of which contradictory statement of the witness is the truth.” Soulios v. Mills Novelty Co., 198 S.C. 355, 364, 17 S.E.2d 869, 874 (1941).<sup>1</sup>

In State v. Needs, the prosecutor and the appellant questioned a witness extensively about conflicting statements she had given. 333 S.C. 134, 144, 508 S.E.2d 857, 862 (1998) modified, State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2004). The witness testified “she lied in her initial statement to police; she lied when she modified her August 1993 statement to say appellant had been speaking ‘hypothetically’; and her testimony at trial directly conflicted with her testimony at the June 1994 pretrial hearing.” Id. However, the witness told jurors she was testifying truthfully at the trial. The Court found that “[w]hile Ms. Smith’s credibility conceivably was in shreds, it was for the jury to decide whether to believe her testimony after the trial judge properly ruled she was competent to testify.” Id.

Appellant argues the trial court erred in denying his motion for a directed verdict because “the only witness to testify as to identity was not credible and could not positively identify appellant as the suspect.” (App.Br.5.) However, this argument is without merit because credibility goes to the weight of evidence, not its existence, and therefore would not have affected the court’s ruling on Appellant’s motion for a directed

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<sup>1</sup> The trial court gave the traditional jury charges on witness credibility, emphasizing the jurors could believe some, all, or none of a witness’s testimony and including the following charge: “Evidence has been presented that a witness made prior statements which are not consistent with the witness’ present testimony. You may use this evidence to decide whether to believe the witness. You may also use evidence of the earlier contradictory statements to determine the truth of those statements. You are to decide whether to believe the earlier statements or the testimony given at trial.” (R. 100, line 22-R. 102, line 6.)

verdict. State v. Condrey, 349 S.C. 184, 190, 562 S.E.2d 320, 323 (Ct. App. 2002)

(“When ruling on a motion for a directed verdict, the trial court is concerned with the existence or non-existence of evidence, not its weight.”). As to whether the witness could positively identify Appellant, she was inconsistent in her responses. She testified she identified Appellant as Junk but stated it was not the same person. (R. 16, lines 4-12.) She testified she told police where he lived and described his car. (R. 17, lines 9-14; R. 19, lines 10-21.) She admitted she told the detective Appellant was the one who drove her to Victim’s house and walked into the house wearing a mask and carrying a weapon. (R. 17, lines 15-25.) She then testified most of what she told the detective was not true and that she really could not even recall that night. (R. 20, lines 3-10.)

When specifically asked if she recalled telling detectives she knew Appellant and knew him as Junk, Montgomery testified she could not remember. (R. 22, lines 20-24.) She clarified that she would not deny it but rather she just did not remember it and admitted it was possible she told the detectives she knew him, saw him every day, and knew him as Junk. (R. 23, lines 1-10.) She testified she lied to detectives when she told them Appellant was looking for Drake. (R. 24, lines 3-20.) She finally admitted she told detectives the day before trial that Junk went with her and stated she did not make that up. (R. 24, line 21-R. 25, line 3.) However, she explained he looked different and that his hair was different. (R. 25, lines 4-15.) She also testified she told detectives she was scared of Junk. (R. 25, lines 16-22.)

The inconsistencies of Montgomery’s testimony as outlined above demonstrate why the credibility of witnesses is an issue for the jury. As long as there is any direct evidence reasonably tending to prove Appellant’s guilt, this Court must find the case was properly submitted to the jury. Montgomery gave some direct testimony that Appellant

was involved in the crime, even though other parts of her testimony indicated she may have lied to the police about his involvement. Merely because inconsistencies occurred in her testimony does not mean the evidence did not exist, and that is all that is required to submit the case to the jury. See Soulios, 198 S.C. at 364, 17 S.E.2d at 874 (holding the jury is the judge of which contradictory statement of the witness is the truth); Ingram, 266 S.C. at 468, 224 S.E.2d at 713 overruled on other grounds, State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991) (stating the resolution of the credibility of witnesses is within the province of the jury). Additionally, direct evidence by Detective Jonathan Martin also existed when he testified Montgomery identified Appellant as Junk and described him in detail—long hair, early 30s, black male, grill in his teeth—and also where he lived and the vehicle he drove. (R. 62, lines 3-14.) Therefore, regardless of what she testified to at trial, the information she provided led Detective Martin to locate the house and car and connect them to Appellant. (R. 62, lines 15-18.)

The cases Appellant cites for the proposition that a directed verdict should be granted when the evidence merely raises a suspicion of guilt are all based on circumstantial cases. This is not a circumstantial evidence case and, thus, the cases Appellant cites do not specifically apply. However, the State certainly agrees with Appellant that the case law is clear that mere suspicion of guilt is not enough. Here, direct evidence exists, albeit from a witness who admittedly had several inconsistencies in her testimony, that demonstrates Appellant drove the car to Victim's house and entered the house wearing a mask and carrying a gun. Because the standard of review mandates this Court view the evidence and all reasonable inferences in the light most favorable to the State, direct evidence by Montgomery and Detective Martin exists reasonably tending to prove Appellant's guilt. Furthermore, in its denial of the directed verdict, the trial

court noted that Montgomery admitted to making the prior statements and properly determined that the fact that she testified she lied was a jury issue. The trial court correctly denied Appellant's directed verdict motion and sent the case to the jury for its resolution, and this Court should affirm its decision.

**CONCLUSION**

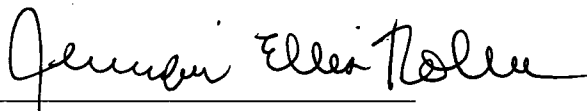
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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APPEAL FROM HORRY COUNTY  
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Benjamin H. Culbertson, Circuit Court Judge

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Appellate Case No. 2014-00202

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**CERTIFICATE OF COUNSEL**

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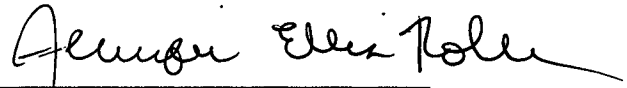
The undersigned hereby certifies the Final Brief of Respondent complies with Rule  
211(b), SCACR.

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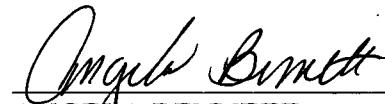
Appellant.

**PROOF OF SERVICE**

I, Angela Bennett, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Robert M. Pachak, Esquire  
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I further certify that all parties required by Rule to be served have been served.  
This 14<sup>th</sup> day of July, 2015.

  
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