ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

NOV 23 2015

S.C. Supreme Court

Certiorari to Spartanburg County

R. Lawton McIntosh, Circuit Court Judge

Opinion No. 2015-UP-446 (S.C. Ct. App. filed September 9, 2015)

12-GS-42-02547

THE STATE,

RESPONDENT,

V.

TIPHANI MARIE PARKHURST,

Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER

INDEX

CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on October 23, 2015.

QUESTIONS PRESENTED

1.

Did the Court of Appeals err by affirming the trial court's denial of Appellant's motion to dismiss where Appellant was charged with trafficking in methamphetamine, ten grams or more, but less than twenty-eight grams, under S.C. Code Ann. § 44-53-375(C) since under the plain language of this statute no "attempt to manufacture" the statutorily required weight could be established when no methamphetamine was found and the state relied solely on empty blister packs of pseudoephedrine to determine a theoretical yield to establish the statutorily required weight?

2.

Did the Court of Appeals err by affirming the trial court's denial of Appellant's motion for a directed verdict when there was no direct evidence or substantial circumstantial evidence that Appellant knowingly engaged in manufacturing or trafficking methamphetamine and where the evidence showed Appellant rented only a single bedroom and had no connection to the rest of the residence where methamphetamine had allegedly been or was being manufactured thereby only raising a mere suspicion of Appellant's guilt that was insufficient to withstand a directed verdict motion?

STATEMENT OF THE CASE

Procedural History

A Spartanburg County Grand Jury indicted Appellant at the May 3, 2012 term of General Sessions for trafficking in methamphetamine, ten grams or more, but less than twenty-eight grams. R. 181-182. Her case was called to trial on February 28, 2013 before the Honorable R. Lawton McIntosh, and a jury. She was tried jointly with her co-defendant, Charles Allen Cain. The trial court assumed that all motions and objections raised by either defense counsel were made jointly by both defendants. R. 20, ll. 17-21. Both Appellant and Cain were tried in their absence after they did not appear for trial. R. 7, l. 7. M. Claire Hall represented Appellant and Robert B. Hall represented Cain. Joseph Hayes Holliday was the assistant solicitor. R. 1.

On March 1, 2013, the jury found Appellant guilty. R. 170, l. 15 – 171, l. 12. She was sentenced by Judge McIntosh to five years suspended upon the service of three years imprisonment and forty months probation. R. 178, ll. 12-22.

The Court of Appeals affirmed Petitioner's conviction and sentence on September 9, 2015. State v. Parkhurst, 2015-UP-446 (S.C. Ct. App. filed September 9, 2015); App. 1-3. Petitioner filed a petition for rehearing on September 18, 2015. App. 4-14. On October 23, 2015, the Court of Appeals denied the petition for rehearing. App. 15.

Petitioner now files this petition for writ of certiorari requesting review of the Court of Appeals' decision.

Relevant Facts

On January 17, 2012, two patrol deputies from the Spartanburg County Sheriff's Office, Kevan Kyle and Chris Wilbanks, responded to a Spartanburg home in an attempt to serve a Family Court bench warrant for a Travis Kirby, an unrelated third party. The deputies chose to

knock on one of the back doors of the residence because a vehicle was parked directly outside that door. R. 34, l. 6 – 35, l. 6; R. 51, ll. 16-21. Appellant and Cain answered the door, which led into an interior bedroom. The two denied knowing Travis Kirby and told the deputies they were renting a single bedroom from the owner of the home and "had nothing to do with the rest of the house." R. 35, l. 5-23; R. 53, ll. 18-22.

After checking Appellant and Cain's identification and presenting the bench warrant, the deputies searched the bedroom and then the remainder of the house. R. 36, ll. 7-18; R. 37, l. 8. They did not locate Travis Kirby. However, the officers discovered what Deputy Kyle described as a "meth lab." In a bathroom located in "the far corner of the house," Deputy Kyle claimed he saw a bottle with "tubing coming from the top. The tubing ran up to a window that was open at the top, and the opening of the tubing was actually out into the air, the outside . . ." R. 37, ll. 10-25. In the living room, Kyle claimed he saw several discarded bottles containing multicolored pellets, coffee filters, tin foil, and batteries. R. 38, ll. 5-10. Based on his training and experience, Deputy Kyle determined the home was being used to manufacture methamphetamine. R. 38, ll. 11-14. Deputy Wilbanks also believed the home was being used to manufacture methamphetamine. R. 55, ll. 4-7.

After the officers determined Travis Kirby was not in the house, they left the home back out the way they had entered, which was through Appellant and Cain's bedroom. According to the officers' testimony, they discovered that Appellant and Cain had left the residence in Appellant's vehicle after attempting to barricade the interior door of the bedroom that led to the rest of the house. R. 39, l. 13 – 40, l. 1; R. 55, l. 12 –56, l. 4. The deputies also allegedly observed "what appeared to be the contents of a one pot or meth lab," specifically liquid containing multicolored pellets, on the grass and concrete area outside the exterior door to

Appellant and Cain's bedroom. Deputy Kyle testified that "it was fresh and it was wet." R. 39, ll. 3-12; R. 42, ll. 2-20; R. 56, l. 17 – 57, l. 4.

The home had no running water or electricity. Nonetheless, Deputy Wilbanks said the residence appeared to be illegally obtaining both through a "drop cord" and a "hose pipe" running from the trailer next door to the home. R. 57, l. 22 – 58, l. 10; R. 62, ll. 17-25. The house also appeared to be under construction. R. 61, ll. 9-12. Wilbanks further testified, "I do remember seeing that it appeared they [Appellant and Cain] had been living in the bedroom" and that there were food and drinks in the room. R. 65, ll. 8-21.

After clearing the residence, Deputy Kyle contacted dispatch who notified the narcotics division of the Spartanburg County Sheriff's Office to respond to the scene. The narcotics division in turn contacted their forensic chemist, Beth Stuart, to assist in cleaning up the residence. R. 57, ll. 12-15. There was no evidence in the record regarding whether the officers obtained a search warrant.

Beth Stuart testified that on January 17, 2012, she had eight and a half years of experience as a chemical analyst. She had a Bachelor of Science Degree in both Chemistry and Biochemistry from the College of Charleston and a Master's Degree in Chemistry from the University of South Carolina. Stuart completed training at the federal Drug Enforcement Administration (DEA), including its "forensic chemist school" and its "clandestine lab school." She is a member of the Clandestine Lab Investigating Chemist Association and is certified by the American Board of Criminalistics in all areas of forensic science. R. 67, l. 6 – 68, l. 16. Stuart was qualified as an expert in forensic chemistry and chemical analysis without objection. R. 69, l. 1 – 70, l. 4.

According to Stuart, common household products can be used to manufacture methamphetamine. R. 70, l. 18-23. She described in detail the "one pot" method of manufacturing methamphetamine that she claimed was used by the individuals at the Spartanburg home and described photographs of the scene. See R. 80, l. 10 – 83, l. 9. Stuart further maintained that manufacturing methamphetamine is a very dangerous process and consequently the components found inside the home were not collected or tested. Instead, a company came out to the residence and disposed of the chemical waste. R. 72, l. 5 – 73, l. 6. Stuart also admitted that none of the components or discarded items found inside the house were fingerprinted allegedly due to the inherent danger of the chemicals. R. 73, ll. 7-24.

Additionally, Stuart conceded that absolutely ***no*** methamphetamine or pseudoephedrine was found inside the house. R. 89, ll. 5-7; R. 103, l. 23 – 104, l. 1; R. 111, ll. 13-15. Instead, she testified she found ***empty*** blister packs that previously contained tablets of pseudoephedrine, a main component in the manufacture of methamphetamine, in trash bags in the living room. Specifically, Stuart found twenty empty blister packs that each previously held twenty-four tablets, each with a weight of thirty milligrams of pseudoephedrine. She also found another four blister packs that each previously held ten tablets, each with a weight of one hundred twenty milligrams of pseudoephedrine. R. 91, ll. 3-7; R. 111, ll. 6-12. Stuart claimed when added altogether the blister packs found inside the home used to contain a total of 19.2 grams of pseudoephedrine. R. 91, ll. 7-9.

Based on this figure alone, Stuart testified she used an equation to determine how much methamphetamine one could manufacture with a one hundred percent yield. Before Stuart was able to testify as to the amount, defense counsel objected arguing such testimony was outside her area of expertise. After further voir dire, the court qualified Stuart as an expert "in the field of

chemistry to be able to give her opinion in the area of theoretical yields" over defense counsel's objection. Stuart claimed that with 19.2 grams of pseudoephedrine, an individual could manufacture 17.67 grams of methamphetamine assuming a one hundred percent yield, 14.13 grams assuming an eighty percent yield, 13.25 grams assuming a seventy-five percent yield, and 11.48 grams assuming a sixty-five percent yield. R. 99, l. 16 – 100, l. 19.

Stuart acknowledged that there was no way to determine what percent yield the individuals in the Spartanburg home theoretically would have been able to obtain. She also acknowledged that the figures she came up with were produced in "laboratory conditions" meaning with the use of pure chemicals and "real glassware" and by a trained chemist. R. 101, l. 12 – 102, l. 6; R. 105, ll. 2-9. Stuart also agreed that it is possible to not get a one hundred percent conversion, meaning some of the ingredients, such as the pseudoephedrine, may not have reacted with the other ingredients, and thereby may have been wasted. R. 105, l. 10 – 106, l.

After presenting only three witnesses, the state rested relying solely on the testimony of the deputies who discovered the alleged methamphetamine manufacturing operation and the chemist. The state presented no physical evidence.

Defense counsel for Cain presented the testimony of Leon Fowler, Sr. R. 116, ll. 4-5. Mr. Fowler testified that he lived in the trailer located one hundred feet behind the residence in this case. R. 121, ll. 15-17. Fowler said the house and trailer are located on two separate lots and have two separate addresses, but that his son, Leon Fowler, Jr., owns both properties. R. 116, ll. 17 – 154, l. 8. Moreover, Fowler testified that Appellant and Cain rented a single bedroom from his son and, as far as he knew, they were only "living in that one room." R. 117, l. 23 – 119, l. 11. He did not know how long Appellant and Cain had been living in the room "but it wasn't very long . . . not over two or three weeks . . ." R. 119, ll. 8-11.

Fowler further testified that Appellant and Cain routinely came to his trailer to use the bathroom and to shower or bathe. As far as he knew, there was no running water in the house. R. 119, ll. 12-16; R. 120, ll. 8-11. Fowler said he did not know whether Appellant and Cain had a power cord running from his trailer to the house, but that his son often did so when he was working on the house. R. 119, l. 24 – 120, l. 7. Fowler testified that it "seemed like" there was a power cord hooked up when the police arrived, but he "wouldn't swear to it." R. 119, l. 24 – 120, l. 7. Surprisingly, Fowler was never questioned by the police. R. 121, ll. 4-9.

Defense counsel argued at trial that Appellant and Cain were "merely present" and were not knowingly involved in the manufacture or trafficking of methamphetamine. Counsel stressed the fact that the couple did not have access to or a lease to the rest of the house and only lived in the single bedroom. They also argued there was no running water in the home and Appellant and Cain relied on Mr. Fowler to use the bathroom and shower at his trailer indicating the couple had no reason to enter the rest of the house. R. 129, l. 19 – 130, l. 25. Moreover, counsel emphasized the fact that the blister packs found in the trash in the living room were empty and that there was no evidence regarding how long the trash had been there or how long Appellant and Cain had lived in the home. R. 136, l. 12-23. Lastly, counsel stressed law enforcement's failure to investigate the owner of the home or any other possible occupants. R. 135, ll. 17-25.

ARGUMENT

1.

The Court of Appeals erred by affirming the trial court's denial of Appellant's motion to dismiss where Appellant was charged with trafficking in methamphetamine, ten grams or more, but less than twenty-eight grams, under S.C. Code Ann. § 44-53-375(C) since under the plain language of this statute no "attempt to manufacture" the statutorily required weight could be established when no methamphetamine was found and the state relied solely on empty blister packs of pseudoephedrine to determine a theoretical yield to establish the statutorily required weight.

Motion to Dismiss

Prior to the jury being sworn, defense counsel for both Appellant and Cain moved to dismiss the respective indictments for trafficking in methamphetamine, ten grams or more, but less than twenty-eight grams, on the grounds that neither could be convicted of the offense under the plain language of the statute. R. 11, ll. 9-23; R. 21, ll. 7-8; R. 20, ll. 14-21. The trial judge acknowledged "that the state intends to have a fairly novel approach to this case in that they're gonna establish trafficking through extrapolation from the aggregate components to say that a yield would have been more than the trafficking amount." R. 8, ll. 1-4. The judge required the state to identify the plain language of S.C. Code Ann. § 44-53-375 that "allows the state to pursue this case in the method that it intends to." R. 13, ll. 6-8.

The state claimed it was relying on the language of subsection (C) of the statute requiring an "attempt" to manufacture ten grams or more of methamphetamine. The assistant solicitor said, "Judge, in this case we would argue that they are attempting to manufactur[e] methamphetamine" with "a theoretical yield of more than ten grams . . ." The solicitor concluded, "Their attempt to manufacture falls directly within the statute, and if you take the

statute based on the plain meaning, and apply that to the facts of this case, I believe that a charge of trafficking would be appropriate." R. 13, l. 9 – 14, l. 1.

Defense counsel for Cain argued that the plain meaning of "attempt" in this context means one has the "components" to manufacture methamphetamine, but has not actually manufactured any. He stated, "[G]iven the Sudafed they have, given the other components, they could have manufactured this much. That would be attempt." Defense counsel argued that is not what the state found in this case. He stated, "This is a theoretical yield saying we have the empty blister packs, we have these other things in the trash that, if you look at all that, they could have manufactured this much." R. 15, l. 22 – 16, l. 6. In essence, defense counsel maintained that because the state only found *empty* blister packs, and did not actually find any pseudoephedrine or methamphetamine, under the plain meaning of the word "attempt" the statute did not apply in this case.

The trial judge repeatedly took the issue under advisement, but ultimately ruled the state could proceed with its case and refused to dismiss the indictments based on the plain language of the statute and the "persuasive authority that was handed in by Mr. Holliday [the assistant solicitor]." R. 20, ll. 7-8; R. 24, ll. 19-25; R. 125, ll. 4-14. The court stated, "[I]t's not necessarily a question of law as much as it is a question of fact for the jury if they believe your theoretical yield theory yields more than ten, less than twenty-eight grams, then I guess they can find him guilty of trafficking." R. 25, ll. 11-16. Subject to defense counsel's objection, the parties agreed to send a special interrogatory to the jury to determine whether the state proved beyond a reasonable doubt that the theoretical yield was ten grams or more but less than twenty-eight grams. R. 125, l. 15 – 126, l. 11; R. 162, ll. 10-25.

Discussion

The Court of Appeals erred by affirming the trial court's denial of Appellant's motion to dismiss because under the plain language of S.C. Code Ann. § 44-53-375(C), Appellant could not be convicted of trafficking in methamphetamine, ten grams or more, but less than twenty-eight grams, under the facts of the case.

The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. Bryant v. State, 384 S.C. 525, 683 S.E.2d 280 (2009). As such, a court must abide by the plain meaning of the words of a statute. State v. Jacobs, 393 S.C. 584, 713 S.E.2d 621 (2011). Also, penal statutes must be strictly construed against the state and in favor of the defendant. Hair v. State, 305 S.C. 77, 78, 406 S.E.2d 332, 334 (1991); State v. Cutler, 274 S.C. 376, 378, 264 S.E.2d 420, 420-421 (1980); State v. Muldrow, 348 S.C. 264, 559 S.E.2d 847 (2002).

When § 44-53-375(C) is strictly construed against the state it does not apply to the facts of this case. The narrow inquiry is whether the evidence constituted an "attempt" to "manufacture . . . . or . . . become in actual or constructive possession of ten grams or more of methamphetamine" under the statute. "Manufacture" is defined as "the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container . . ." S.C. Code Ann. § 44-53-110(25). Moreover, "methamphetamine" is defined as "any salt, isomer, or salt of an isomer, or any mixture or compound containing amphetamine or methamphetamine." S.C. Code Ann. § 44-53-110(28). "Attempt" is not defined.

Under the plain language of the statute, the state could not prove an attempt to manufacture or become in actual or constructive possession of ten grams or more of methamphetamine without first proving possession of either pseudoephedrine, the main component, or methamphetamine, the end product. Because neither were found by law enforcement in this case, the state should not have been permitted to proceed with the indictment for trafficking methamphetamine, ten grams or more, but less than twenty-eight grams. Instead, Appellant's indictment should have been dismissed by the trial judge.

The state at trial relied on Iowa v. Knapp, 778 N.W.2d 218 (Iowa App. 2009), an unpublished disposition that is easily distinguishable from the case at hand. In Knapp, the defendant was tried for conspiracy to manufacture more than five grams of methamphetamine among other charges after **a bag containing 16.8 grams of pure pseudoephedrine**, which had a theoretical yield of 15.4 grams of pure methamphetamine, was **found on his person**. Knapp argued on appeal that the trial court erred in denying his motion for a judgment of acquittal. However, the Court of Appeals of Iowa held "the State can rely on evidence of the potential yield to prove the amount of methamphetamine conspired to be produced." Because the amount of crushed pseudoephedrine found on Knapp's person had the potential to yield more than five grams of methamphetamine, the court held there was "sufficient evidence for a factfinder to infer a conspiracy to manufacture more than five grams of methamphetamine." Id. Here, there was no pseudoephedrine found in the house or on Appellant's person and Appellant was charged with trafficking not "conspiracy to manufacture."

While the record is unclear, it appears the state also presented and relied on the case of U.S. v. Spencer, 439 F.3d 905 (8th Cir. 2006).[1] See R. 114, ll. 21-25. Spencer is also easily distinguishable from the facts of this case. In Spencer, law enforcement **seized bottles of pseudoephedrine** from Spencer's home that "could have produced a theoretical yield of 79.1 grams and a practical yield of forty-two to sixty-four grams of actual (pure) methamphetamine" and the jury found him guilty of "attempting to manufacture five grams or more of actual (pure) methamphetamine" among other drug related offenses. Id. at 911-912. The Eight Circuit held that there was sufficient evidence to support Spencer's conviction because "although Spencer may not have possessed a fully working methamphetamine lab, Spencer had ordered, received, and **possessed chemicals** and equipment necessary to manufacture methamphetamine." Id. at 916.

In both Knapp and Spencer, law enforcement actually seized a quantity of pseudoephedrine. Because pseudoephedrine is the main component in the manufacture of methamphetamine a jury could assume in both those cases that the defendant intended to attempt to manufacture methamphetamine or assist another in attempting to manufacture methamphetamine. Moreover, the jury could find based on the amount of pseudoephedrine seized that the defendants in both cases intended to manufacture a specific amount of methamphetamine as required under the respective statutes in both cases.

However, in Appellant's case, law enforcement found **no** methamphetamine or pseudoephedrine in the Spartanburg home. In fact, **there was no evidence that 19.2 grams of pseudoephedrine was ever in the Spartanburg home or was ever in Appellant's possession.**

[1] The case is cited on the record as "United States of America versus Joseph Nelson." As best as can be ascertained by undersigned counsel, the case referred to is U.S. v. Joseph Nelson Spencer, 439 F.3d 905 (8th Cir. 2006).

R. 91, ll. 7-9. Furthermore, there was no testimony regarding how long the empty blister packs had been in the residence or how they got there. Without an actual quantity of the main component used to manufacture methamphetamine that could be relied upon to establish a theoretical yield and without any actual methamphetamine, Appellant could not be prosecuted pursuant to § 44-53-375(C) and thus her indictment for trafficking in methamphetamine should have been dismissed. Therefore, the Court of Appeals erred by holding the trial court properly denied Appellant's motion to dismiss the indictment based on a plain reading of § 44-53-375(C).

2.

The Court of Appeals erred by affirming the trial court's denial of Appellant's motion for a directed verdict when there was no direct evidence or substantial circumstantial evidence that Appellant knowingly engaged in manufacturing or trafficking methamphetamine and where the evidence showed Appellant rented only a single bedroom and had no connection to the rest of the residence where methamphetamine had allegedly been or was being manufactured thereby only raising a mere suspicion of Appellant's guilt that was insufficient to withstand a directed verdict motion.

Motion for Directed Verdict

At the conclusion of the state's case, defense counsel moved for a directed verdict on the grounds that the state failed to provide sufficient evidence of trafficking to present the case to the jury. Defense counsel argued that "merely being in the proximity of something that appears to be a meth lab is not enough." Counsel noted there was no evidence of who actually owned the property or whether Appellant and Cain had a lease to the entire house. Rather, the testimony indicated that Appellant and Cain rented only a single bedroom in the residence. Defense counsel also noted that there was no evidence of methamphetamine production found within the bedroom Appellant and Cain admittedly lived in and there was no nexus connecting Appellant and Cain to the rest of the house. Counsel for Appellant further argued that the evidence presented by the state "does not rise to the level of enough evidence to present to the jury that these clients [Appellant and Cain] **knowingly** engaged in manufacturing or trafficking methamphetamine . . ." R. 112, l. 23 – 114, l. 20.

Defense counsel for both Appellant and Cain renewed their motions for a directed verdict at the close of the testimony and, after the jury's verdict, both motioned for a new trial based on

a lack of substantial circumstantial evidence to support the jury's verdict. R. 164, l. 16 – 165, l. 12; R. 172, ll. 2-9.

Discussion

A defendant is entitled to a directed verdict when the prosecution fails to provide evidence of the offense charged. State v. Brown, 103S.C. 437, 88 S.E.21 (1916); State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006); State v. McHoney, 344 S.C. 85, 97 544 S.E.2d 30, 36 (2001). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused," the trial judge may deny the motion for directed verdict. State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001); State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000); State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000). When the prosecution relies exclusively on circumstantial evidence, the trial judge must direct a verdict in the defendant's favor unless there is any **substantial circumstantial evidence** which reasonably tends to prove the guilt of the defendant or from which his guilt may be fairly and logically deduced. State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011); State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000).

Likewise, a directed verdict is proper when the evidence produced "merely raises a suspicion the accused is guilty." Lollis, 343 S.C. at 584, 541 S.E.2d at 256; State v. Arnold, 361 S.C. 386, 389-390, 605 S.E.2d 529, 531 (2004); State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 451-452 (1984). Our courts define suspicion as "a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." Lollis, 343 S.C. at 584, 541 S.E.2d at 256; State v. Hyder, 242 S.C. 372, 131 S.E.2d 96 (1963).

In this case, the trial judge erred in denying Appellant's motion for a directed verdict where there was no direct evidence or substantial circumstantial evidence that Appellant

knowingly engaged in manufacturing or trafficking methamphetamine and where the evidence indicated Appellant and Cain rented only a single bedroom and had no connection to the rest of the residence where methamphetamine had allegedly been or was being manufactured.

In Mitchell, 341 S.C. at 409, 535 S.E.2d at 127, this Court held the lower court erred in failing to direct a verdict where the only evidence presented against the defendant was his fingerprint at the scene of the burglary. Likewise, in Lollis, the Court directed a verdict of acquittal in the defendant's favor where the state presented no direct evidence that Lollis was involved in setting fire to his home. The only circumstantial evidence against Lollis was that his wife admitted to the arson, he had placed valuables in storage prior to the fire, he possessed a key to the storage unit, and he allegedly had financial troubles. Our Supreme Court found this evidence insufficient to survive a directed verdict motion. Lollis, 343 S.C. at 581-586, 541 S.E.2d at 256-257.

In State v. Odems, 395 S.C 582, 720 S.E.2d 48 (2011), this Court held Odems was entitled to a directed verdict based upon a lack of substantial circumstantial evidence that he was involved in the burglary. The evidence presented against Odems was (1) less than ninety minutes after the burglary, police located him in the getaway car with the admitted burglars and the stolen goods; (2) Odems fled from law enforcement, and (3) Odems asked an uninvolved person to lie for him. Id. at 585-588, 720 S.E.2d at 49-51. Even with this evidence, our Supreme Court held the state failed to provide substantial circumstantial evidence that Odems was present during the home invasion. Id. at 592, 720 S.E.2d at 53.

In State v. Bostick, 392 S.C. 134, 141, 708 S.E.2d 774, 778 (2011), our Supreme Court held the prosecution failed to present substantial circumstantial evidence of Bostick's guilt. Rather, according to the Court, the state's evidence was capable of producing only a suspicion of Bostick's guilt. Id. The state accused Bostick of killing his neighbor and burning down her home. The state

presented the following circumstantial evidence at trial: (1) the neighbor's personal items were found in a burn pile located on the Bostick family property; (2) Bostick's shoes contained a pattern that matched gasoline, and gasoline was the accelerant used to start the house fire; and (3) investigators found blood on the clothes Bostick was wearing the day of the murder, but that evidence could not be matched to the neighbor's DNA. Id. at 142, 708 S.E.2d at 778. The Court held this evidence was insufficient to survive a directed verdict motion.

The prosecution in this case failed to present substantial circumstantial evidence that Appellant was knowingly engaged in trafficking methamphetamine. Specifically, the state failed to produce sufficient circumstantial evidence to establish Appellant and Cain had knowledge of the alleged manufacturing operation or any connection to it. Deputy Kyle testified Appellant and Cain stated they rented only a single bedroom and "had nothing to do with the rest of the house." R. 35, ll. 19-23. Additionally, Deputy Wilbanks testified that it appeared Appellant and Cain were living in the bedroom and had food and drinks in the bedroom. R. 65, ll. 8-21. There was also no testimony that any of Appellant or Cain's possessions were found in any area of the house besides the bedroom. Moreover, no evidence of methamphetamine production was found inside the bedroom.

Additionally, the state failed to present any evidence regarding whether Appellant and Cain had a lease to the entire house or a right to use the entire house. The police failed to question the homeowner of the residence or investigate whether the homeowner was responsible for the alleged manufacturing operation. The police also failed to question neighbors, including Mr. Leon Fowler, Sr., or attempt to locate Travis Kirby who law enforcement believed lived at the home since they came looking for him at that location with a bench warrant. In short, nothing linked Appellant to the rest of the residence and the state failed to investigate other

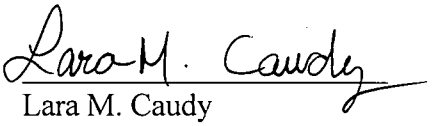
parties who may have been responsible for the alleged manufacturing operation or who may have had more information about who had possession of the remainder of the house or access to it.

The state's evidence merely raised a suspicion that Appellant and Cain were involved in the manufacture or trafficking of methamphetamine and thus the Court of Appeals erred by affirming the trial court's denial of her motion for a directed verdict. Respectfully, this Court should reverse the holding of the Court of Appeals and direct a verdict in Appellant's favor.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and order full briefing on the questions presented.

Respectfully submitted,



Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of November, 2015

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

R. Lawton McIntosh, Circuit Court Judge

Opinion No. 2015-UP-446 (S.C. Ct. App. filed September 9, 2015)
12-GS-42-02547

THE STATE,

RESPONDENT,

V.

TIPHANI MARIE PARKHURST,

APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on David Spencer, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and the South Carolina Court of Appeals, this 23rd day of November, 2015.

Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 23rd day
of November, 2015.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.