The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

April 8, 2016

The Honorable Beulah G. Roberts
PO Box 136
Manning SC 29102-0136

REMITTITUR

Re: The State v. Michael Wilson Pearson
Lower Court Case No. 2011GS1400068
Appellate Case No. 2014-002741

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,

CLERK

cc: Kathrine Haggard Hudgins, Esquire
Jennifer Ellis Roberts, Esquire

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Petitioner,

v.

Michael Wilson Pearson, Respondent.

Appellate Case No. 2014-002741

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Clarendon County
R. Ferrell Cothran, Jr., Circuit Court Judge

Opinion No. 27612
Heard November 4, 2015 – Filed March 23, 2016

REVERSED

Attorney General Alan McCrory Wilson and Assistant Attorney General Jennifer Ellis Roberts, both of Columbia, for Petitioner.

Appellate Defender Kathrine Haggard Hudgins, of Columbia, for Respondent.

JUSTICE BEATTY: Michael Wilson Pearson was convicted of first-degree burglary, armed robbery, kidnapping, grand larceny, and possession of a

weapon during the commission of a violent crime. The trial judge sentenced Pearson to an aggregate sentence of sixty years' imprisonment. The Court of Appeals reversed, holding the circumstantial evidence presented by the State was insufficient to submit the case to the jury. *State v. Pearson*, 410 S.C. 392, 764 S.E.2d 706 (Ct. App. 2014). This Court granted the State's petition for a writ of certiorari to review the decision of the Court of Appeals. For reasons that will be discussed, we reverse the decision of the Court of Appeals and affirm Pearson's convictions and sentences.

I. Factual / Procedural History

Around 6:15 a.m. on May 15, 2010, Edward "Slick" Gibbons ("Victim") was attacked by three black males wearing masks as he exited his garage. According to Victim, he was putting on his shoes to get ready to go to work when the men ran out of a storage room in his carport and threw him on the ground. The three men robbed Victim of approximately $840, beat him, and wrapped duct tape around his head. One of the men called Victim by his nickname, "Slick," and said, "Slick, you know that we know that you got money," and the man asked him where the rest of the money was located. Victim told them he had already given them everything he had and begged them not to beat him anymore. Victim noticed one of the men appeared to have something in his hand that might have been a pistol, and he heard the men discuss whether to shoot him.

The three men then left in Victim's 1987 Chevrolet El Camino. As the men were driving away, Victim pulled himself up and observed one man, who was riding in the open back of the El Camino, yell to the two men seated inside the vehicle, "he's up, he's up." This man got out of the vehicle, ran back to Victim and hit him again, rendering him unconscious. When Victim regained consciousness, he alerted his wife by ringing the doorbell on the home. Victim's wife contacted her daughter who called 911 to report the attack.

At approximately 6:40 a.m., a local farmer, Cecil Eaddy, Jr., found the El Camino abandoned in the road with the keys still in it, the motor running, and the passenger door open. The car was located about a mile and half from the auto parts store that Victim owned and within a few miles of Victim's home. Eaddy pulled the vehicle out of the road, turned off the engine, took the keys to Victim's store, and drove Walter Bush, one of Victim's employees, back to the vehicle so that Bush could drive it to Victim's store. Bush testified he drove the vehicle "[s]traight back to the store."

Ricky Richards, an investigator with the Clarendon County Sheriff's Department, responded to the 911 call. After a few minutes at Victim's home, Richards was called to process the El Camino. Richards testified he lifted fingerprints from the driver's side "door jamb" and the "rear quarter on the driver's side." Richards acknowledged there was no way to tell when the fingerprints were left on the vehicle.

While Victim was being treated at the hospital, Thomas Ham, an investigator with the Clarendon County Sheriff's Department, assisted Investigator Kenneth Clark in his interview with Victim. Investigator Ham also took the duct tape that was removed from Victim's head and submitted it to SLED for processing.

Ultimately, a fingerprint recovered from the vehicle was identified as a thumbprint belonging to Pearson and DNA evidence on the duct tape was matched to Victor Weldon. Marie Hodge, the Automated Fingerprint Identification System ("AFIS") examiner, testified that she was able to determine that the fingerprint matched Pearson's right thumbprint. However, Hodge admitted she could not "age" the fingerprint as it could have been "there from two years on up to two days."

Following his arrest, Pearson was interviewed by Investigators Clark and Ham. Investigator Clark testified that Pearson denied he knew Victim or where he lived. According to Investigators Clark and Ham, Pearson stated that he had never been to Victim's house or come in contact with Victim's vehicle. Investigator Clark also interviewed Victor Weldon, who denied having any involvement in the crimes. In separate interviews, Pearson and Weldon denied that they knew each other.

To counter these statements, the State presented evidence that Pearson had been on Victim's property. Richard Gamble, a local landscaper, testified Pearson had previously assisted him in doing landscaping work for Victim and Victim's son, who lived on the same block. Although Gamble could not recall the exact date of the landscaping project, he believed it took place in the spring of 2009 or 2010 and lasted "at least 5 days." Gamble further testified that while working on the project, he observed Pearson enter Victim's garage in order to retrieve tools that were located in the storage area.

Additionally, the State presented the testimony of John Hornsby, who worked as an area supervisor at the South Carolina Vocational Rehabilitation

Center in Sumter. According to Hornsby, time cards and attendance records revealed Pearson and Weldon were both assigned to the facility's woodshop from December 9 through December 12, 2008. Hornsby indicated that around twenty-five individuals generally worked at the woodshop on a daily basis.

After the State rested, Pearson and Weldon both moved for a directed verdict on all charges. Pearson's counsel argued that even though Pearson's fingerprint was found on the outside of Victim's car, the fingerprint was insufficient to place Pearson at the crime scene. Counsel explained there was no evidence as to when the fingerprint was placed on the El Camino and further noted that Pearson lived a block and half from Victim's auto parts store where the vehicle was parked. Counsel opined that "[i]t could have been [placed] well before this whole thing happened."

In response, the State argued that Pearson's fingerprint was found on the rear of the vehicle, where Victim testified one of the men who robbed him had been seated as they drove away. The State also referenced evidence that Pearson and Weldon attended the same job training program over a four-day period, as well as testimony that Pearson had done landscaping work at Victim's home.

Pearson's counsel replied that there were no fingerprints found on the back of the El Camino where Victim "identified the man getting out of the truck, on or off the truck." Counsel reiterated that "the fingerprint was the only hard evidence the State ha[d] against [Pearson] found on that truck."

The trial judge denied both directed verdict motions. In so ruling, the judge stated:

> As far as Mr. Pearson's fingerprint the evidence in this case that has come before this jury that I recall he told the police officer he did not know [Victim]. He had not been at his house or his place of business.
>
> His vehicle was taken that morning. Within 30 minutes the vehicle was found abandoned a mile and a half or two miles away. The vehicle was processed and was carried to the auto parts place and processed. That day his fingerprint was found on the vehicle.

> And I certainly think at least that's sufficient evidence for the jury to make a determination of guilt or innocence in this case. And I respectfully deny your motion.

The judge explained he was aware there was also evidence that Pearson had done landscaping work in Victim's yard, was familiar with Victim's house, and there was a question regarding the timeframe of this work. However, the judge found this presented a question of fact for a jury to evaluate because Pearson maintained that he had no contact with Victim or his property.

Neither Pearson nor Weldon presented any evidence. The jury convicted both of first-degree burglary, armed robbery, kidnapping, grand larceny, and possession of a weapon during the commission of a violent crime.

Pearson appealed to the Court of Appeals. The Court of Appeals reversed, finding the circumstantial evidence presented by the State did not rise to the level of substantial circumstantial evidence necessary to submit the case to the jury. *State v. Pearson*, 410 S.C. 392, 764 S.E.2d 706 (Ct. App. 2014).

In so ruling, the court found that although the recovered fingerprint directly tied Pearson to the stolen vehicle, "the fingerprint merely raised a suspicion of Pearson's guilt because there was no additional evidence showing when the fingerprint was placed on the vehicle." *Id.* at 402, 764 S.E.2d at 712. The court explained that "there was other evidence showing Pearson may have had an opportunity to come in contact with the vehicle before the crimes occurred." *Id.* at 401, 764 S.E.2d at 711. The court noted there was "testimony that [Victim] regularly parked his vehicle in a public lot adjacent to his store" and Pearson "assisted with a five-day landscaping project at [Victim's] residence." *Id.*

The court also noted that "the additional incriminating evidence presented by the State failed to fill the gaps in proof and left the jury to speculate as to Pearson's guilt." *Id.* at 402, 764 S.E.2d at 711. Specifically, the court found no evidence established a relationship between Pearson and Weldon and, at most, the "evidence demonstrate[d] the two co-defendants worked in the same facility at the same time." *Id.* at 402, 764 S.E.2d at 712. Although Pearson and Weldon denied knowing each other, the court found "it is not incredible that neither man could remember a fellow participant in a program they attended more than a year before the crimes." *Id.* The court concluded that "[d]espite the fact Weldon was tied to the crimes because of his DNA on the duct tape, nothing tied Pearson to the crime scene." *Id.*

Following the denial of the State's petition for rehearing, this Court granted certiorari to review the decision of the Court of Appeals.

II. Standard of Review

"[W]hen the State fails to produce substantial circumstantial evidence that the defendant committed a particular crime, the defendant is entitled to a directed verdict." *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011); *see Hepburn*, 406 S.C. at 429, 753 S.E.2d at 408 ("In cases where the State has failed to present evidence of the offense charged, a criminal defendant is entitled to a directed verdict."). Further, when the State relies exclusively on circumstantial evidence and a motion for a directed verdict is made, the trial judge is concerned with the existence or non-existence of evidence, not with its weight. *Cherry*, 361 S.C. at 594, 606 S.E.2d at 478. The trial judge "should not refuse to grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty." *Id.* "'Suspicion' implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." *Id.* "However, a trial judge is not required to find that the evidence infers guilt to the exclusion of *any other reasonable hypothesis*." *State v. Ballenger*, 322 S.C. 196, 199, 470 S.E.2d 851, 853 (1996) (emphasis added).

"On appeal from the denial of a directed verdict, this Court views the evidence and all reasonable inferences in the light most favorable to the State." *State v. Butler*, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014).

III. Discussion

A. Arguments

The State argues the Court of Appeals erroneously reversed Pearson's convictions based upon a misapplication of the standard of review regarding the denial of a motion for a directed verdict. Although the State acknowledges that the Court of Appeals correctly identified the standard of review regarding "substantial circumstantial evidence," the State maintains the Court of Appeals improperly focused on "the State's burden of proving beyond a reasonable doubt the identity of the defendant as the person who committed the charged crime[.]" According to the State, the Court of Appeals confused the burden of proof required to sustain a conviction with the level of evidence required to sustain a challenge at the directed verdict stage.

Citing *State v. Hepburn*, 406 S.C. 416, 753 S.E.2d 402 (2013) and *State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004),[1] the State contends the trial judge was not required to find the inferences from the evidence demonstrated Pearson's guilt to the exclusion of *every* other reasonable hypothesis. Instead, the State claims the relevant question was, after viewing the evidence in the light most favorable to the State, whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, as a trial judge must not weigh the facts. In support of this claim, the State notes that these principles are consistent with decisions of the United States Supreme Court ("USSC") such as *Jackson v. Virginia*, 443 U.S. 307 (1979).[2]

Further, the State asserts that in reversing the trial judge's decision, the Court of Appeals engaged in speculation and weighed the evidence of the fingerprint "rather than simply considering its existence[] to determine whether it reached the level of substantial circumstantial evidence." In essence, the State avers the Court of Appeals reached its decision based on the "mere possibility" that Pearson may

---

[1] The State references the following language in *Hepburn*:

> The trial court should grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty as suspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. On the other hand, a trial judge is not required to find that the evidence infers guilt to the exclusion of *any other reasonable hypothesis*.

Hepburn, 406 S.C. at 429, 753 S.E.2d at 409 (quoting *Cherry*, 361 S.C. at 594, 606 S.E.2d at 478 (citations & internal quotations marks omitted)) (emphasis added).

[2] In *Jackson*, the USSC stated:

> [T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from the basic facts to ultimate facts.

Jackson, 443 U.S. at 319 (citation omitted).

have had an opportunity to come in contact with Victim's vehicle before the crimes occurred. Even assuming that this alternate hypothesis was reasonable, the State asserts that the evidence did not need to exclude the hypothesis in order to submit the case to the jury.

B. Case Trend

Recently, this Court has been presented with a series of criminal cases where the Court of Appeals has reversed the trial judge's denial of a defendant's motion for a directed verdict on the ground the circumstantial evidence was insufficient to submit the case to the jury. Two of these cases, *State v. Lane*, 406 S.C. 118, 749 S.E.2d 165 (Ct. App. 2013),[3] and *State v. Bennett*, 408 S.C. 302, 758 S.E.2d 743

---

[3] In *Lane*, the defendant was indicted for first-degree burglary in connection with the theft of several firearms at the victim's home. *Lane*, 406 S.C. at 119, 749 S.E.2d at 166. At trial, the State presented evidence that the victim's neighbor observed a red car with gray primer paint on the front passenger panel and a paper license plate parked in the victim's driveway on the afternoon of the burglary. *Id.* at 120, 749 S.E.2d at 166. The neighbor observed two people in the vehicle, one of whom walked back and forth from the vehicle to the victim's front door. *Id.* Later that evening, following the burglary, the victim found a piece of paper with a unique username and password printed upon it lying next to his driveway. *Id.* at 120, 749 S.E.2d at 167. Law enforcement went to interview Lane after determining that the piece of paper had been issued to Lane from the local unemployment office. *Id.* The officers found Lane at his girlfriend's parents' home where they observed the red car with the gray primer paint and a paper license plate in the driveway. *Id.* Although Lane was initially evasive, he acknowledged that he was driving the red car the day of the burglary and confirmed that he had been issued the paper from the unemployment agency. *Id.* The Court of Appeals reversed the trial court's refusal to direct a verdict of acquittal for Lane, finding the State did not present substantial circumstantial evidence to prove Lane committed first-degree burglary. *Id.* at 122, 749 S.E.2d at 168. This Court granted the State's petition for a writ of certiorari and reversed, finding the evidence was sufficient to withstand Lane's motion for a directed verdict. *State v. Lane*, 410 S.C. 505, 765 S.E.2d 557 (2014).

(Ct. App. 2014),[4] were cited to support the decision of the Court of Appeals in the instant case. *Pearson*, 410 S.C. at 398-400, 764 S.E.2d at 710-11.

This Court has since reversed *Lane* and *Bennett*. Further, in *Bennett*, the Court took the opportunity to resolve the apparent confusion over the appropriate standard governing whether the State has presented sufficient evidence to overcome a motion for a directed verdict. *State v. Bennett*, 415 S.C. 232, 781 S.E.2d 352 (2016). Initially, the Court differentiated between the analysis of a court considering circumstantial evidence when ruling on a directed verdict motion and that performed by the jury. *Id.* at ___, 781 S.E.2d at 354. The Court explained that "[w]ithin the jury's inquiry, 'it is necessary that every circumstance relied upon by the state be proven beyond a reasonable doubt; and that all of the circumstances so proven be consistent with each other and, taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis.'" *Id.* (quoting *State v. Littlejohn*, 228 S.C. 324, 328, 89 S.E.2d 924, 926 (1955)). In contrast, the trial court, when ruling on a directed verdict motion, "views the evidence in the light most favorable to the State and must submit the case to the jury if there is 'any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.'" *Id.*

---

[4] In *Bennett*, the defendant was convicted of second-degree burglary, malicious injury to property, and petit larceny in connection with theft and destruction at a community center. *State v. Bennett*, 408 S.C. 302, 758 S.E.2d 743 (Ct. App. 2014). The State presented evidence that a window was broken at the community center and that the door next to it was ajar. *Id.* at 303, 758 S.E.2d at 744. Inside the community center, there was evidence that a television, which was mounted on the wall of the community room, had been tampered with, as if someone had been attempting to remove it. *Id.* at 304, 758 S.E.2d at 744. A fingerprint lifted from the television matched Bennett's fingerprints. *Id.* Officers also discovered that a computer and television were missing from the computer room. *Id.* When officers returned later in the day, they found two drops of blood located beneath the stand where the television had been. *Id.* at 305, 758 S.E.2d at 745. The DNA profile from the blood droplets matched that of Bennett, who had also been identified as a frequent visitor at the community center. *Id.* On appeal, the Court of Appeals reversed, finding the evidence only created a suspicion of guilt and, therefore, a directed verdict should have been granted in Bennett's favor. *Id.* at 307, 758 S.E.2d at 746. This Court granted the State's petition for a writ of certiorari and reversed, finding the evidence was sufficient to withstand Bennett's motion for a directed verdict. *State v. Bennett*, 415 S.C. 232, 781 S.E.2d 352 (2016).

(quoting *Littlejohn*, 228 S.C. at 329, 89 S.E.2d at 926). Based on this distinction, the Court explained:

> [A]lthough the *jury* must consider alternative hypotheses, the *court* must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt. This objective test is founded upon reasonableness. Accordingly, in ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt.

Id.; *see State v. Larmand*, 415 S.C. 23, 32, 780 S.E.2d 892, 896 (2015) ("Although Respondent presented plausible explanations for each of these facts, our duty is not to weigh the plausibility of the parties' competing explanations. Rather, we must assess whether, in the light most favorable to the State, there was substantial circumstantial evidence from which the jury could infer Respondent's guilt.").

C. Application

Here, the State presented evidence that: (1) Pearson's fingerprint was found on the stolen vehicle, which was located approximately two miles from Victim's home within thirty minutes of the crime; (2) Pearson denied that he had contact with Victim's vehicle, knew Victim, or knew where he lived; (3) Victim testified that before the suspects drove away one of the men, who was riding in the open back of the vehicle, got out of the vehicle and returned to attack him; (4) Pearson and Weldon were in the same vocational rehabilitation training program during a four-day period; and (5) DNA evidence on the duct tape removed from Victim's head was matched to Weldon.

Viewing this evidence in the light most favorable to the State, we conclude the evidence could induce a reasonable juror to find Pearson guilty. As in *Bennett*, we find the Court of Appeals weighed the evidence and erroneously required the State, at the directed verdict stage, to present evidence sufficient to exclude *every* other hypothesis of Pearson's guilt. *See Pearson*, 410 S.C. at 401-02, 764 S.E.2d at 711 ("Because the State offered no timing evidence to contradict *reasonable*

explanations for the presence of the fingerprint, the jury could only have guessed the fingerprint was made at the time of the crimes." (emphasis added)).[5]

IV. Conclusion

Accordingly, we reverse the decision of the Court of Appeals and affirm Pearson's convictions and sentences.

REVERSED.

KITTREDGE, HEARN, JJ., and Acting Justice Jean H. Toal, concur. PLEICONES, C.J., concurring in result only.

---

[5] Pearson cites *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2011), *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) as examples of cases where this Court found that circumstantial evidence, particularly fingerprint evidence, was insufficient for submission to the jury when the State failed to place the defendant at the scene of the crime. While we have certainly considered these cases, we need not engage in the futile exercise of attempting to distinguish their holdings from the instant case as we have recognized that "in this area of ever-evolving jurisprudence our inquiry is necessarily fact-intensive" and holdings in these cases are "limited to their peculiar facts." *Bennett*, 415 S.C. at ___ n.1, 781 S.E.2d at 354 n.1.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Michael Wilson Pearson, Appellant.

Appellate Case No. 2012-212430

Appeal From Clarendon County
R. Ferrell Cothran Jr., Circuit Court Judge

Opinion No. 5251
Heard June 17, 2014 – Filed July 30, 2014
Withdrawn, Substituted and Refiled October 8, 2014

REVERSED

Appellate Defender Kathrine H. Hudgins, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant Attorney General Jennifer Ellis Roberts, both of Columbia, for Respondent.

GEATHERS, J.: Appellant Michael Wilson Pearson challenges his convictions for first-degree burglary, armed robbery, grand larceny, kidnapping, and possession of a weapon during the commission of a violent crime. Pearson argues the State failed to present substantial circumstantial evidence of his involvement in any of the crimes charged and, therefore, the trial court erred in denying his motion for a directed verdict. We reverse.

FACTS/PROCEDURAL HISTORY

Around 6:15 a.m. on May 15, 2010, Edward "Slick" Gibbons was jumped by three men as he exited his garage. The three men robbed Gibbons of approximately $840, beat him, and wrapped duct tape around his head. Following the attack, the men fled the scene in Gibbons' 1987 Chevrolet El Camino. The vehicle was discovered approximately thirty minutes later, abandoned on the side of a nearby road. A fingerprint recovered from the rear of the vehicle was matched to Pearson. The duct tape removed from Gibbons' head contained DNA evidence, which was matched to Victor Weldon.

Pearson and Weldon were both indicted for attempted murder, first-degree burglary, armed robbery, grand larceny, kidnapping, and possession of a weapon during the commission of a violent crime. A joint trial was held May 16 through May 18, 2012. At the time of trial, investigators had yet to identify a third suspect.

At trial, Gibbons testified that as he was leaving for work, three black men wearing masks came out of the storage room inside of his garage and threw him on the ground. According to Gibbons, one of the men sat on top of his legs, while the other two men hit and kicked him. While Gibbons was on the ground, the men wrapped duct tape around his head. Gibbons claimed that one of the men had something in his hand that "looked like a pistol." He further testified the men took all of the money in his wallet and then one of the men asked him, "Slick . . . where is the rest of it[?]" After the robbery, the three men left the garage and started to drive away. Gibbons described how he pulled himself off the ground and looked out a window in the garage to see them driving off in his El Camino. Gibbons noted that when he got up, one of the men, who was seated in the rear bed of the El Camino, jumped out of the vehicle, ran back, and knocked him unconscious.

Cecil Eaddy, a local farmer, testified he found the abandoned El Camino around 6:40 a.m. with the motor running and the passenger door open. Eaddy recounted how he turned the vehicle off and took the keys to Gibbons' auto parts store. Eaddy stated he returned the keys so that one of Gibbons' employees could drive the vehicle back to the store. Walter Bush, an employee at Gibbons' store, corroborated Eaddy's testimony. According to Bush, Eaddy picked him up from the store and drove him to the location of the vehicle. Bush testified he drove the vehicle "straight back to the store."

Ricky Richards, an investigator with the Clarendon County Sheriff's Office, testified he went to Gibbons' store, where he processed the El Camino. Richards stated he lifted fingerprints from the driver's side "door jamb" and the "rear quarter on the driver's side." On cross-examination, Richards admitted there was no way to determine when the fingerprints were left on the vehicle.

Investigator Thomas "Lin" Ham testified he visited Gibbons at the hospital on the day of the crimes.[1] Ham indicated that while he was at the hospital, he took the duct tape that was removed from Gibbons' head into evidence. In addition, Ham testified that during an interview with Pearson following his arrest, Pearson "adamantly denied knowing Mr. Gibbons." Ham elaborated: "[Pearson] told me he didn't know where [Mr. Gibbons] lived. He had never been there. He had never been to [Mr. Gibbons'] place of business. He had never come into contact with [Mr. Gibbons'] vehicle."

Marie Hodge, the automated fingerprint identification system (AFIS) examiner at the Sumter Police Department, was qualified as an expert in fingerprint identification. Hodge testified she ran seven fingerprints lifted from the vehicle through the AFIS but did not obtain an identification for any of the prints. After obtaining no hits, Hodge printed out the fingerprints of persons of interest from the AFIS and compared each set of prints "one-on-one" to the lifted fingerprints. According to Hodge, a side-by-side comparison of the prints showed that a right thumbprint found on the rear of the vehicle belonged to Pearson. Hodge later received a card containing Pearson's ink-rolled fingerprints from the Sheriff's Office and compared the prints on the card to the lifted thumbprint. Hodge testified the comparison "reaffirmed" that the thumbprint belonged to Pearson. On cross-examination, Hodge conceded that she was unable to "date" or "age" a fingerprint. She further testified that when left undisturbed, a fingerprint "can be there for quite some time."

Investigator Kenneth Clark testified he interviewed Pearson following Pearson's arrest. Clark noted that during the interview, Pearson denied ever being around Gibbons or Gibbons' property. According to Clark, when he informed Pearson that his fingerprint had been found on Gibbons' vehicle, Pearson declined to comment. Clark testified that subsequent investigation revealed Pearson had previously worked on a landscaping project at Gibbons' residence.

---

[1] Investigator Ham testified he had known Gibbons all of his life and frequently referred to Gibbons as "Mr. Slick" throughout his testimony.

Clark also testified concerning the investigation into co-defendant Victor Weldon's involvement in the crimes. He noted that during an interview with Weldon, Weldon denied knowing Pearson or having any involvement in the crimes. Clark indicated, however, that records from the South Carolina Vocational Rehabilitation Center revealed Pearson and Weldon both worked at the same job training program from December 9 through December 12, 2008.

Richard Gamble, a local landscaper, testified Pearson had previously assisted him in doing landscaping work for Gibbons and Gibbons' son, who lived on the same block. Gamble could not recall the exact date of the landscaping project; however, he indicated it took place in the spring of 2009 or 2010. He estimated the project lasted "at least 5 days." Gamble testified that while working on the project, he observed Pearson enter Gibbons' garage in order to retrieve job-related tools that were located in the storage area.

The State also presented the testimony of John Hornsby, who worked as an area supervisor at the South Carolina Vocational Rehabilitation Center. According to Hornsby, time cards and attendance records revealed Pearson and Weldon were both assigned to the facility's woodshop from December 9 through December 12, 2008. Hornsby stated that around twenty-five individuals generally worked at the woodshop on a daily basis.

After the State rested, Pearson and Weldon both moved for a directed verdict on all charges. Pearson argued that even though his fingerprint was found on the outside of Gibbons' car, the fingerprint was insufficient to place him at the crime scene. In reply, the State argued the fingerprint was found on the rear of the vehicle, where Gibbons testified one of the men who robbed him had been seated as they fled his house. The State also pointed to evidence that the two co-defendants attended the same job training program over a four-day period, as well as testimony that Pearson had done landscaping work at Gibbons' home. The trial court denied Pearson's and Weldon's motions for a directed verdict. The trial court stated:

> As far as Mr. Pearson's fingerprint[,] the evidence in this case that has come before this jury that I recall he told the police officer he did not know Mr. Gibbons. He had not been at his house or his place of business. His vehicle was taken that morning. Within 30 minutes[,] the vehicle was found abandoned a mile and a half or two miles away. The vehicle was processed and was carried to the auto parts place and processed. That day his fingerprint

> was found on the vehicle. And I certainly think at least that's sufficient evidence for the jury to make a determination of guilt or innocence in this case. And I respectfully deny your motion.

The jury found Pearson and Weldon guilty of burglary in the first degree, armed robbery, grand larceny, kidnapping, and possession of a weapon during the commission of a violent crime. The trial court sentenced Pearson to a total of sixty years' imprisonment. This appeal followed.

STANDARD OF REVIEW

"On appeal from the denial of a directed verdict, [an appellate court] must view the evidence in the light most favorable to the State." *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011). "[I]f there is any direct or *substantial* circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." *Id.*

LAW/ANALYSIS

Pearson argues the circumstantial evidence presented by the State did not rise to the level of substantial circumstantial evidence necessary to submit the case to the jury. We agree.

"'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)). "The State has the burden of proving beyond a reasonable doubt the identity of the defendant as the person who committed the charged crime or crimes." *Id.*; *see also State v. Schrock*, 283 S.C. 129, 133, 322 S.E.2d 450, 452 (1984) (noting the State has the burden of proving "the accused was at the scene of the crime when it happened and that he committed the criminal act"). If there is substantial circumstantial evidence reasonably tending to prove the defendant's guilt, an appellate court must find the trial court properly submitted the case to the jury. *Lane*, 406 S.C. at 121, 749 S.E.2d at 167 (citing *Odems*, 395 S.C. at 586, 720 S.E.2d at 50). "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). "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). "'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 this matter, the key evidence relied upon by the State to place Pearson at the crime scene was the presence of his fingerprint on the rear of Gibbons' vehicle. Our courts have addressed the sufficiency of fingerprint evidence where the State relies on such evidence to prove a defendant's guilt. We find a review of these cases is instructive in determining whether the circumstantial evidence presented by the State met the "substantial circumstantial evidence" standard.

In *Mitchell*, our supreme court affirmed this court's decision that Mitchell was entitled to a directed verdict on a burglary charge. 341 S.C. at 409, 535 S.E.2d at 127. The only evidence linking Mitchell to the burglary was his fingerprint on a window screen that was propped up against the exterior of the victim's house. *Id.* at 408–09, 535 S.E.2d at 127. The court found the fingerprint evidence was insufficient to prove Mitchell's guilt because there was testimony Mitchell had been in and around the victim's house at least three times before the burglary. *Id.* at 409, 535 S.E.2d at 127. Additionally, the court reasoned a directed verdict was appropriate because "[t]he State did not present any evidence whether the screen was on the window at the time the window was broken or when the screen had been removed." *Id.*

Similarly, in *State v. Bennett*, 408 S.C. 302, 306, 758 S.E.2d 743, 745 (Ct. App. 2014), this court assessed whether evidence of Bennett's fingerprint and DNA at the site of a burglary constituted substantial circumstantial evidence. Therein, a television, computer, monitor, and keyboard were stolen from a Spartanburg community center. *Id.* at 303–04, 758 S.E.2d at 744. Bennett's fingerprint was discovered on a wall-mounted television in the community room that appeared to have been manipulated by the burglar. *Id.* Additionally, two droplets of Bennett's blood were found directly below the location of a missing television in the computer room. *Id.* at 305, 758 S.E.2d at 745. It was undisputed that Bennett was a frequent visitor to the center before the crime and spent much of his time in the computer room. *Id.* at 307, 758 S.E.2d at 745. The director of the center testified she did not recall seeing Bennett in the community room, which was solely used for scheduled events. *Id.* at 304–05, 758 S.E.2d at 744. However, the director acknowledged that the community room was not always locked or consistently monitored. *Id.*

Applying the directed verdict standard, the *Bennett* court found the State did not present substantial circumstantial evidence reasonably proving Bennett's guilt. *Id.*

at 307, 758 S.E.2d at 746. The court recognized the evidence presented by the State "undoubtedly placed Bennett at the *location where a crime ultimately occurred*." *Id.* However, the court rejected the State's assertion that the evidence served to "place[] Bennett *at the scene of the crime*." *Id.* The court reasoned the exact locations of the DNA and fingerprint evidence "d[id] not rise above suspicion" because it was not "unexpected" to find Bennett's DNA and fingerprints in a communal area he frequented before the crime. *Id.*

Additionally, in *State v. Arnold*, 361 S.C. 386, 390, 605 S.E.2d 529, 531 (2004), our supreme court held that fingerprint evidence placing Arnold in the victim's borrowed vehicle on the same day the victim was last seen alive was not substantial and merely raised a suspicion of Arnold's guilt. In *Arnold*, the victim's body was discovered off a dirt road in Colleton County, South Carolina. *Id.* at 388, 605 S.E.2d at 530. The victim was last seen alive three days earlier, when he borrowed a colleague's BMW to go to a dentist appointment. *Id.* One of the State's witnesses testified he had introduced the victim to Arnold. *Id.* The witness indicated he had received a message from Arnold to call him at a phone number belonging to Arnold's father, who lived in Gray, Tennessee. *Id.* at 389, 605 S.E.2d at 530. The borrowed BMW was later found in a parking lot in Johnson City, Tennessee, approximately ten miles away from where Arnold's father lived. *Id.* at 389–90 & n.3, 605 S.E.2d at 530–31 & n.3. The BMW had unspecified scratches on it, and a coffee cup lid containing Arnold's fingerprint was found in the car's center console. *Id.* at 389, 605 S.E.2d at 530. In concluding that the circumstantial evidence presented by the State was insufficient to overcome a directed verdict motion, the court reasoned:

> Viewing the evidence most favorably to the State, [Arnold]'s fingerprint on the coffee cup lid tab establishes he was in the borrowed BMW on the same day the victim was last seen alive. The fact that the BMW was found abandoned in Tennessee, the same state where [Arnold] was located after his stay in Savannah, raises a suspicion of guilt but is not evidence that [Arnold] killed [the victim]. Further, there is no evidence [Arnold] was at the scene of the crime, which according to the State's theory was in Colleton County.

Id. at 390, 605 S.E.2d at 531 (footnote omitted).

Under the facts of this case and consistent with the reasoning in the aforementioned cases, there is insufficient evidence tying Pearson to the crimes. Here, the most damaging evidence was Pearson's fingerprint on the rear of Gibbons' vehicle. However, there was other evidence showing Pearson may have had an opportunity to come in contact with the vehicle before the crimes occurred. For instance, there was testimony that Gibbons regularly parked his vehicle in a public lot adjacent to his store. Moreover, there was testimony that Pearson assisted with a five-day landscaping project at Gibbons' residence, and he could have come in contact with the vehicle at that time. *See Mitchell*, 341 S.C. at 409, 535 S.E.2d at 127 (finding that fingerprint evidence was insufficient to prove the defendant's guilt because there was testimony the defendant had been in and around the victim's house at least three times before the burglary). Most notably, the State's fingerprint expert testified she could not determine when the print was placed on the vehicle and that such a print could remain on a vehicle for an indefinite period if left undisturbed. Because the State offered no timing evidence to contradict reasonable explanations for the presence of the fingerprint, the jury could only have guessed the fingerprint was made at the time of the crimes. *See Buckmon*, 347 S.C. at 322–23, 555 S.E.2d at 405 (holding defendant was entitled to a directed verdict where none of the evidence presented by the State placed defendant at the crime scene and the jury was left to speculate as to defendant's guilt).

We further note the additional incriminating evidence presented by the State failed to fill the gaps in proof and left the jury to speculate as to Pearson's guilt. *See State v. Ballenger*, 322 S.C. 196, 199, 470 S.E.2d 851, 853 (1996) ("The motion [for a directed verdict] should be granted where a jury would be speculating as to the accused's guilt or where the evidence is sufficient only to raise a strong suspicion of guilt." (citation omitted)). In addition to the fingerprint, the State offered evidence that Pearson and his co-defendant, Weldon, previously attended the same job training program. It would be speculative, however, to infer a relationship between the two co-defendants considering approximately twenty-five individuals took part in the job training program. At most, this evidence demonstrates the two co-defendants worked in the same facility at the same time. Moreover, Pearson and Weldon both denied knowing each other during their separate interviews with investigators. Although it is possible Pearson and Weldon interacted during the program, it is not incredible that neither man could remember a fellow participant in a program they attended more than a year before the crimes. Despite the fact Weldon was tied to the crimes because of his DNA on the duct tape, nothing tied Pearson to the crime scene.

Viewing all of the evidence in the light most favorable to the State, there was insufficient evidence to submit the case to the jury. The recovered fingerprint directly tied Pearson to the stolen vehicle. Nonetheless, the fingerprint merely raised a suspicion of Pearson's guilt because there was no additional evidence showing when the fingerprint was placed on the vehicle. Moreover, none of the other evidence presented by the State placed Pearson at the crime scene or established a relationship between Pearson and Weldon. For this reason, the jury could only have guessed Pearson was involved in the crimes. "[S]uspicion, however strong, does not suffice to sustain a conviction." *State v. Hyder*, 242 S.C. 372, 379, 131 S.E.2d 96, 100 (1963). A defendant is entitled to a judgment of acquittal "where [the] evidence merely raises a suspicion of guilt, or is such as to permit the jury to merely conjecture or to speculate as to the accused's guilt." *State v. Brown*, 267 S.C. 311, 316, 227 S.E.2d 674, 677 (1976). Accordingly, we find the trial court erred by denying Pearson's directed verdict motion.

CONCLUSION

For the foregoing reasons, Pearson's convictions are

REVERSED.

FEW, C.J., and SHORT, J., concur.