

**ORIGINAL**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Spartanburg County

Honorable R. Lawton McIntosh, Circuit Court Judge  
\_\_\_\_\_

**RECEIVED**

SEP 01 2016

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

TIPHANI MARIE PARKHURST,

PETITIONER.

APPELLATE CASE NO. 2015-002404  
\_\_\_\_\_

BRIEF OF PETITIONER  
\_\_\_\_\_

LARA M. CAUDY  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
P.O. Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

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**ISSUES PRESENTED**

1.

Did the Court of Appeals err by affirming the trial court's denial of Petitioner's motion to dismiss where Petitioner 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 Petitioner's motion for a directed verdict when there was no direct evidence or substantial circumstantial evidence that Petitioner knowingly engaged in manufacturing or trafficking methamphetamine and where the evidence showed Petitioner 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 Petitioner's guilt that was insufficient to withstand a directed verdict motion?

## STATEMENT

A Spartanburg County Grand Jury indicted Petitioner on May 3, 2012 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 Petitioner and Cain were tried in their absence after they did not appear for trial. R. 7, l. 7. M. Claire Hall represented Petitioner and Robert B. Hall represented Cain. Joseph Hayes Holliday was the Assistant Solicitor. R. 1.

On March 1, 2013, the jury found Petitioner guilty. R. 170, l. 16 – 171, l. 19. 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 filed a Petition for Writ of Certiorari to the Court of Appeals with this Court on November 23, 2015. The state filed a return on December 15, 2015. By order dated August 4, 2016, this Court granted certiorari to review the Court of Appeals' decision.

### **Motion to Dismiss**

Prior to the jury being sworn, Petitioner moved to dismiss her indictment for trafficking in methamphetamine, ten grams or more, but less than twenty-eight grams, on the grounds that she could not be convicted of the offense under the plain language of the statute where no

methamphetamine or pseudoephedrine was found by law enforcement. R. 11, ll. 9-23; R. 21, ll. 7-8; R. 20, ll. 14-21. Judge McIntosh 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.

Counsel for Cain argued the plain meaning of “attempt” in this context means one has all 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.” However, law enforcement did not find any of the necessary “components” or ingredients, including pseudoephedrine, in this case. Counsel continued, “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 [theoretically] could have manufactured this much.” R. 15, l. 22 – 16, l. 6 (emphasis added). In essence, counsel maintained that because the state did not find any pseudoephedrine, any of the other necessary components to

manufacture methamphetamine, or actual methamphetamine the state could not prove trafficking under the plain meaning of the statute.

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].”<sup>1</sup> 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 Petitioner and Cain’s objection, the parties later 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.

### **Facts at Trial**

On January 17, 2012, two patrol deputies from the Spartanburg County Sheriff’s Office, Kevan Kyle and Chris Wilbanks, responded to a Spartanburg County home in an attempt to serve a Family Court bench warrant for Travis Kirby. The house appeared to be under construction and had no running water or electricity. However, it appeared the residence was illegally obtaining both through a “drop cord” and a “hose pipe” running from a trailer next door to the home. R. 57, l. 22 – 58, l. 10; R. 61, ll. 9-12; R. 62, ll. 17-25.

The deputies chose to knock on one of the back doors of the residence after observing a car parked directly outside that door. R. 34, l. 18 – 35, l. 6; R. 51, ll. 16-21. Petitioner and Cain

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<sup>1</sup> The assistant solicitor cited State v. Knapp, 778 N.W.2d 218 (Iowa App. 2009) and U.S. v. Spencer, 439 F.3d 905 (8th Cir. 2006) in support of his argument.

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 else to do with the rest of the house.” R. 35, l. 3-23; R. 53, ll. 18-22.

After checking Petitioner and Cain’s identification and presenting the bench warrant, the deputies searched the bedroom and then the remainder of the house. R. 36, ll. 7-15; R. 37, ll. 6-8. 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 an open window and opened up outside. R. 37, ll. 9-25. In the living room, Kyle claimed he saw coffee filters, tin foil, batteries, and several discarded bottles containing multicolored pellets. R. 38, ll. 5-10. Deputy Kyle suspected 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 returned to Petitioner and Cain’s bedroom. However, they found the interior door to the bedroom, which led to the rest of the house, was barricaded. They also discovered that Petitioner and Cain had left the residence in Petitioner’s car. R. 39, l. 13 – 40, l. 1; R. 55, l. 12 – 56, l. 4. The deputies allegedly observed liquid containing multicolored pellets on the grass and concrete area outside the exterior door to Petitioner and Cain’s bedroom. Deputy Kyle claimed this liquid “was fresh and . . . wet.” R. 39, ll. 3-12; R. 42, ll. 2-20; R. 56, l. 17 – 57, l. 4.

Beth Stuart, a forensic chemist with the narcotics division, ultimately responded to assist in cleaning up the residence. R. 57, ll. 12-15. None of the components or materials found inside the home, including the liquid containing multicolored pellets, were collected or tested. Instead,

a company came to the residence and immediately disposed of the chemical waste. R. 72, l. 5 – 73, l. 6. Moreover, none of the discarded items found inside the house were fingerprinted. R. 73, ll. 7-24.

At trial, Stuart was qualified as an expert in forensic chemistry and chemical analysis without objection. R. 69, l. 1 – 70, l. 4. She claimed that common household products can be used to manufacture methamphetamine. R. 70, ll. 16-23. She described in detail the “one pot” method of manufacturing methamphetamine that she maintained was used by the individuals at the Spartanburg home. R. 80, l. 10 – 83, l. 9.

Significantly, 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, all she found were *empty* blister packs that once 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 claimed she used an equation to determine how much methamphetamine one could *theoretically* manufacture with a one hundred percent yield. Before Stuart was able to testify as to the weight, 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 *theoretically* 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 County 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. 13.

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.

### **Motion for a Directed Verdict**

After the state rested, Petitioner 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. Counsel argued that “merely being in the proximity of something that appears to be a meth lab is not enough.” She emphasized that there was no evidence of who actually owned the property or whether Petitioner and Cain had a lease to the entire house. Rather, she maintained that the testimony established Petitioner and Cain rented only a single bedroom in the residence, that there was no evidence of methamphetamine production found within that bedroom, and that there was no

“nexus” connecting Petitioner and Cain to the rest of the house. R. 112, l. 23 – 114, l. 13. Moreover, counsel argued the evidence presented by the state “does not rise to the level of enough evidence to present to the jury that these clients [Petitioner and Cain] **knowingly** engaged in manufacturing or trafficking methamphetamine.” R. 114, ll. 8-13 (emphasis added).

Petitioner later renewed her motion for a directed verdict and, after the verdict, motioned for a new trial based on a lack of substantial circumstantial evidence to support the verdict. R. 164, l. 16 – 165, l. 12; R. 172, ll. 2-9.

### **Cain’s Presentation of Evidence**

Cain presented the testimony of Leon Fowler, Sr. R. 116, ll. 4-5. Mr. Fowler lived in the trailer located one hundred feet behind the residence in this case. R. 121, ll. 15-17. He said the house and his 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. According to Fowler, Petitioner 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 Petitioner 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 said Petitioner and Cain routinely came to his trailer to use the bathroom and to shower or bathe. R. 119, ll. 12-16. As far as he knew, there was no running water or electricity in the house. Fowler did not know whether Petitioner and Cain had a power cord running from his trailer to the house, but Fowler said his son often did so when he was working on the house. R. 119, l. 24 – 120, l. 11. Surprisingly, neither Fowler nor his son were ever questioned by the police. R. 121, ll. 4-9.

## **Closing Arguments**

During closing arguments, counsel argued Petitioner and Cain were merely present and that there was insufficient evidence that the two were knowingly involved in the manufacture or trafficking of methamphetamine. Counsel stressed that there was no evidence the couple had a lease to the part of the house where methamphetamine was allegedly being manufactured. Rather they only stayed in the single bedroom. She also argued there was no running water in the home and Petitioner 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. 135, ll. 13-15.

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 Petitioner 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 who may have been responsible for the alleged manufacturing operation. R. 135, ll. 17-25.

## ARGUMENT

1.

The Court of Appeals erred by affirming the trial court's denial of Petitioner's motion to dismiss where Petitioner 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.

The Court of Appeals erred by affirming the trial court's denial of Petitioner's motion to dismiss because under the plain language of S.C. Code Ann. § 44-53-375(C) Petitioner could not be convicted of trafficking in methamphetamine, ten grams or more, but less than twenty-eight grams, under the facts of the case. Significantly, law enforcement found no methamphetamine or pseudoephedrine in the Spartanburg County home. Consequently, the state, in a novel approach, relied on empty blister packs of pseudoephedrine to determine a theoretical yield to establish the statutorily required weight for trafficking.

"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, 529, 683 S.E.2d 280, 282 (2009) (quoting Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996)) (internal quotation marks omitted). "As such, a court must abide by the plain meaning of the words of a statute." State v. Jacobs, 393 S.C. 584, 587, 713 S.E.2d 621, 622 (2011) (citing Hodge v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). Also, penal statutes must be strictly construed against the state and in favor of the defendant. Hair v. State, 305 S.C. 77, 79, 406 S.E.2d 332, 334

(1991) (citing State v. Cutler, 274 S.C. 376, 378, 264 S.E.2d 420, 420-421 (1980)); State v. Muldrow, 348 S.C. 264, 268, 559 S.E.2d 847, 849 (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 a sufficient weight of either pseudoephedrine, the main component, or methamphetamine, the end product. Because neither substance was 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, Petitioner’s indictment should have been dismissed by the trial judge.

The state at trial relied on State v. Knapp, 778 N.W.2d 218 (Iowa App. 2009), an unpublished disposition that is easily distinguishable from the case at hand and overall not helpful to

the state's position. 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**. Id. 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." Id. (emphasis added). 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, on the other hand, **there was no pseudoephedrine found in the Spartanburg County house or on Petitioner's person** and the state relied on a *theoretical* yield as opposed to a *potential* yield. Also, Petitioner 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).<sup>2</sup> 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." 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 there was sufficient evidence to support Spencer's conviction because "although Spencer may not have

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<sup>2</sup> 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).

possessed a fully working methamphetamine lab, Spencer had ordered, received, and **possessed chemicals** and equipment necessary to manufacture methamphetamine.” Id. at 916 (emphasis added).

In both Knapp and Spencer, law enforcement actually seized 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 or conspired to manufacture the specific amount of methamphetamine required under the respective statutes in each case.

However, in Petitioner’s case, law enforcement found **no** methamphetamine or pseudoephedrine in the Spartanburg County home. In fact, **there was no evidence whatsoever that 19.2 grams of pseudoephedrine, or any other amount, was ever in the Spartanburg home or was ever in Petitioner’s possession.** 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 weight of the main component used to manufacture methamphetamine that could be relied upon by the state to establish a potential yield and without any actual methamphetamine, the state could not prove all the elements of trafficking under § 44-53-375(C) and thus Petitioner’s indictment for trafficking in methamphetamine should have been dismissed. Therefore, the Court of Appeals erred by holding the trial court properly denied Petitioner’s motion to dismiss the indictment based on the plain language of § 44-53-375(C).

The Court of Appeals erred by affirming the trial court's denial of Petitioner's motion for a directed verdict when there was no direct evidence or substantial circumstantial evidence that Petitioner knowingly engaged in manufacturing or trafficking methamphetamine and where the evidence showed Petitioner 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 Petitioner's guilt that was insufficient to withstand a directed verdict motion.

The Court of Appeals erred by affirming the trial court's denial of Petitioner's motion for a directed verdict where there was no direct evidence or substantial circumstantial evidence that Petitioner knowingly engaged in manufacturing or trafficking methamphetamine and where the evidence indicated Petitioner and Cain rented only a single bedroom and had no connection to the rest of the house where methamphetamine had allegedly been or was being manufactured. The state failed to present substantial circumstantial evidence that Petitioner had dominion and control over any part of the residence besides the bedroom. Significantly, no evidence of trafficking was found in the bedroom.

A defendant is entitled to a directed verdict when the prosecution fails to provide evidence of the offense charged. State v. Odems, 395 S.C 582, 586, 720 S.E.2d 48, 50 (2011). "If there is any direct evidence or any 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." State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001) (citing State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (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) (citing State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (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 (citing State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000)); State v. Arnold, 361 S.C. 386, 390, 605 S.E.2d 529, 531 (2004); State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 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 (citing State v. Hyder, 242 S.C. 372, 131 S.E.2d 96 (1963)).

In State v. Heath, 370 S.C. 326, 329, 635 S.E.2d 18, 19 (2006), this Court held the evidence presented was insufficient to establish Heath was in constructive possession of crack cocaine and consequently directed a verdict of acquittal in his favor. Heath, 370 S.C. at 328, 635 S.E.2d at 18. Heath lived in a house with his mother and a young child. His mother owned the house. Law enforcement obtained a warrant to search in and around the house for crack cocaine. When officers arrived to execute the search warrant, Heath and his brother were outside in front of the house. It appeared Heath had just finished washing his car. Upon the officers’ arrival, Heath’s brother ran inside the house and locked himself in a bathroom. Officers ultimately found crack cocaine, numerous plastic baggies, scales, and twenty-five hundred dollars in cash inside the home. Additionally, a police dog discovered a car washing mitt in a recycling bin near the back door of the house containing 43.48 grams of crack cocaine. Id. at 328-329, 635 S.E.2d at 18-19.

This Court held the state presented no direct or substantial circumstantial evidence linking Heath to the crack cocaine. The Court further held the state failed to present evidence Heath could exercise dominion and control over the area where the crack was found. In so holding, the Court noted that, while Heath lived in the home where the crack was found, the home was owned by his mother. As a result, the Court concluded, “[I]t was arguable that [Heath] merely had a right to access the area where the crack was found, not actual dominion and control of the property.” Id. at 330, 635 S.E.2d at 19.

In State v. Lollis, 343 S.C. 580, 583, 541 S.E.2d 254, 256 (2001), this 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 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. Despite this evidence, the Court held a directed verdict should have been granted. 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), this Court held the state failed to present substantial circumstantial evidence of Bostick’s guilt. Rather, this Court held 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.<sup>3</sup>

Here, the prosecution failed to present any direct or substantial circumstantial evidence that Petitioner was knowingly engaged in trafficking methamphetamine. More specifically, the state failed to produce sufficient circumstantial evidence to establish Petitioner and Cain had any knowledge of the alleged manufacturing operation, dominion and control over the part of the house where methamphetamine was allegedly being manufactured, or any connection to that part of the house. According to Deputy Kyle, Petitioner and Cain said "they were renting the bedroom from the owner of the house, and that was the only area they went in, which is just that one bedroom, and they had nothing to do with the rest of the house." R. 35, ll. 16-23. Additionally, Deputy Wilbanks testified that it appeared Petitioner and Cain were only living in the bedroom and had food and drinks in that room. R. 65, ll. 8-21.

Moreover, there was also no evidence whatsoever that any of Petitioner or Cain's possessions were found in any area of the house besides the bedroom and, significantly, there

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<sup>3</sup> Petitioner is aware of this Court's holding in State v. Bennett, 415 S.C. 232, 236 n. 1, 781 S.E.2d 352, 354 n. 1 (2016) and State v. Pearson, 415 S.C. 463, 474 n. 5, 783 S.E.2d 802, 808 n. 5 (2016) that the inquiry in direct verdict cases is "necessarily fact-intensive" and the holdings in such cases are "limited to their peculiar facts." However, suffice it to say, the holdings in Heath, Lollis, Odems, and Bostick are still important to consider.

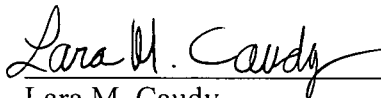
was no evidence of methamphetamine production found inside the bedroom. What is more, the evidence established that the home was under construction and had no running water or electricity. Mr. Fowler testified that Petitioner and Cain frequently came to his trailer to use the bathroom and shower, indicating the couple had no reason to enter the rest of the house. R. 119, l. 12 – 120, l. 11.

Likewise, the state failed to present any evidence regarding whether Petitioner 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 Petitioner 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 and dominion and control over the remainder of the house.

The state's evidence merely raised a suspicion that Petitioner 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 Petitioner's favor.

**CONCLUSION**

By reason of the foregoing argument, Petitioner respectfully requests this Court reverse her conviction and dismiss the indictment, or in the alternative, direct a verdict of acquittal in her favor.

A handwritten signature in cursive script that reads "Lara M. Caudy". The signature is written in black ink and is positioned above a horizontal line.

Lara M. Caudy  
Appellate Defender

ATTORNEY FOR PETITIONER

This 1st day of September, 2016.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

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Certiorari to Spartanburg County

S.C. SUPREME COURT

Honorable R. Lawton McIntosh, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

TIPHANI MARIE PARKHURST,

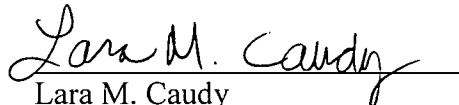
PETITIONER

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CERTIFICATE OF SERVICE

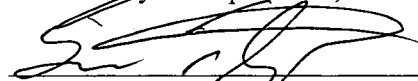
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The undersigned hereby certifies that a true copy of the Brief of Petitioner in the above referenced case has been served upon David Spencer, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 1st day of September, 2016.

  
\_\_\_\_\_  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 1st day of September, 2016.

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