

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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ORIGINAL

Appeal from Beaufort County

Honorable Kristi Lea Harrington, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

CHARLES CLASTON BROWN,

APPELLANT

APPELLATE CASE NO 2017-001860

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ANDERS BRIEF OF APPELLANT

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JUL 05 2018  
SC Court of Appeals

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**STATEMENT OF ISSUE ON APPEAL**

Whether the trial court erred in failing to direct a verdict in Appellant's favor on the charge of pointing and presenting a firearm, where testimony from a law enforcement officer indicated that he was unsure whether Appellant was holding a gun, and where the same officer did not fire his weapon at Appellant because he did not believe such an action would be justified?

## STATEMENT OF THE CASE

On January 26, 2017, a Beaufort County Grand Jury indicted Appellant Charles Brown for pointing and presenting a firearm. R. 196.

On August 28, Appellant proceeded to trial before the Honorable Kristi L. Harrington and a jury. R. 1. Leigh Staggs and Mary J. Lempesis appeared on behalf of the State, and Jessica Saxon represented Appellant.

The jury found Appellant guilty as charged. R. 183 – 184. The trial court sentenced Appellant to five years' incarceration. R. 193.

This appeal follows.

### STANDARD OF REVIEW

“A case should be submitted to the jury when the evidence is circumstantial ‘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.’” State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011) (quoting State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)). “Evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt.” Id. “Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error.” Id. at 139, 708 S.E.2d at 776-777. “On appeal of the denial of a directed verdict of acquittal, this Court must look at the evidence in the light most favorable to the state.” Id. at 139, 708 S.E.2d at 777; see also State v. Hepburn, 406 S.C. 416, 429 753 S.E.2d 402, 409 (2013). If the state failed to present any direct evidence or any substantial circumstantial evidence reasonably tending to prove guilt of the accused, the appellate court must reverse the lower court’s denial of the directed verdict motion. Hepburn, 406 S.C. at 416, 429 S.E.2d at 409.

## ARGUMENT

**The trial court erred in failing to direct a verdict in Appellant's favor on the charge of pointing and presenting a firearm, where testimony from a law enforcement officer indicated that he was unsure whether Appellant was holding a gun, and where the same officer did not fire his weapon at Appellant because he did not believe such an action would be justified.**

### **Relevant Facts**

On July 9, 2016, Jade Cituk called 911 after allegedly hearing gunshots outside her home in Beaufort. R. 62, l. 15 – R. 63, l. 12. After supposedly hearing additional shots, she saw Appellant standing on his back porch and called 911 again. Id. She never saw any gunshots, however. R. 64, ll. 16 – 17.

At least three law enforcement officers responded to the calls. At trial, the jury first heard from Troy Krapf, a Corporal with the Beaufort County Sheriff's Office. R. 66, l. 24 – R. 67, l. 2. Krapf heard gunshots after arriving at Appellant's home and proceeded to duck behind a wall. R. 67, l. 7 – R. 69, l. 19. Appellant was standing in his doorway telling the officers to go home. Id., R. 80, ll. 7 – 13. Krapf fired a shot in Appellant's direction, ultimately traveling through the doorframe before piercing Appellant's left hand and then bruising his chest. Id., R. 135, l. 4 – R. 136, l. 6. Appellant was then handcuffed and searched. R. 69, ll. 11 – 21.

Jason Stuckey, a sergeant with the Beaufort County Sheriff's Office, also responded to the scene. R. 86, ll. 5 – 19. He recalled that on July 9, 2016, Appellant stepped outside his house, mirroring Krapf's testimony. R. 87, ll. 9 – 22. However, he indicated that he was unable to discern whether Appellant was holding a gun. Stuckey was only able to identify it as a dark

object. Because he “could not clearly make out that it was a gun, [he] did not fire.” Id. Stuckey did not believe that shooting Appellant would be justified at that point. R. 97, ll. 20 – 25.

Martin Thomas, a master sergeant with the Beaufort County Sheriff’s Office, responded to the scene and searched Appellant’s home. R. 98, l. 22 – R. 99, l. 100, l. 10. He located a black handgun on the arm of a sofa inside Appellant’s home. Id. He recalled that it was “very dark” at the scene. R. 104, l. 3 – R. 105, l. 2. Law enforcement officers did not observe any blood or blood spatter on the sofa or the cushions around the sofa. R. 127, l. 23 – R. 128, l. 10; R. 129, ll. 14 – 18.

At the conclusion of the state’s case-in-chief, defense counsel renewed all previous motions and objections and also moved for a directed verdict. R. 151, l. 5 – R. 152, l. 22. The trial court requested that the state “go through the elements of the charge” and discuss the testimony that meets each element. Id. After the state complied, the trial court denied the motion for a directed verdict. Id.

After counsel for Appellant rested on the record, counsel again renewed all objections and motions. R. 154, l. 3 – R. 155, l. 21. The trial court stood by its previous rulings. Id.

During sentencing, Appellant testified that he did not remember pointing a gun at anyone. R. 192.<sup>1</sup> According to medical records, he was diagnosed with schizophrenia, moderate alcohol use disorder, moderate cocaine use disorder, and moderate cannabis use disorder on or about October 7, 2015. He exhibited occasional paranoia, auditory hallucinations, visual hallucinations, and anxiety.

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<sup>1</sup> Appellant was diagnosed with bipolar schizophrenia according to an evaluation authored by Sheresa Christopher, Ph.D. marked as Court’s Exhibit 1.

## Discussion

In reviewing a motion for directed verdict, the trial court is concerned with the existence of evidence, not with its weight. State v. Curtis, 356 S.C. 622, 633, 591 S.E.2d 600, 605 (2004). When the evidence presented merely raises a suspicion of the accused's guilt, the trial court should not refuse to grant the directed verdict motion. State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004). However, the trial court 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.” State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000).

The elements of pointing and presenting a firearm are (1) pointing or presenting; (2) a loaded or unloaded firearm; (3) at another. S.C. Code Ann. § 16–23–410; see also In re Spencer R., 387 S.C. 517, 522–23, 692 S.E.2d 569, 572 (Ct. App. 2010) (providing the following definition of “to present” as it is used in section 16–23–410: “to offer to view in a threatening manner, or to show in a threatening manner”).

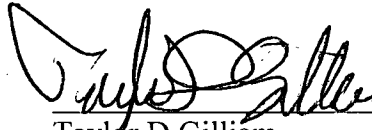
Testimony from multiple law enforcement officers who were on scene confirm the notion that there was not enough light to be able to discern Appellant’s actions. It was unclear what he was holding in his hand, if anything. As a result, the State failed to offer any evidence tending to prove his guilt. The trial court should have granted Appellant’s motion for a directed verdict. As articulated by counsel, “the only testimony [at trial] was from Officer Krapf that there was definitely a gun in Mr. Brown’s hand at that time. All other testimony is either contradictory or unsure.” R. 151, ll. 17 – 24.

During deliberations, the jury wanted to re-visit State’s Exhibit 2, the in-car video from Krapf’s car. R. 181 – 182. The jury also sent a written question inquiring about whether

Appellant was left or right-handed. The evidence in this case only raised a suspicion of Appellant's guilt. His guilt could not be fairly or logically deduced.

**CONCLUSION**

By reason of the foregoing arguments, Appellant respectfully requests that this Court issue an Order of Acquittal on his conviction.

A handwritten signature in black ink, appearing to read "Taylor D Gilliam", written over a horizontal line.

Taylor D Gilliam  
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of July, 2018.

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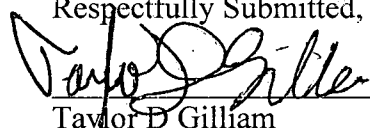
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Charles Claston Brown states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Kristi Lea Harrington, which was held on August 28 - 29, 2017, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, He asks the Court to relieve him as counsel for Charles Claston Brown.

Respectfully Submitted,



Taylor D Gilliam  
Appellate Defender  
ATTORNEY FOR APPELLANT

This 5th day of July, 2018.

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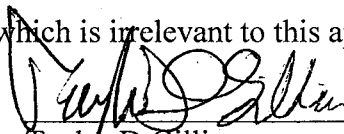
**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment;
- (2) Entire pre-trial and trial transcript from August 28-29, 2017;
- (3) Court's Exhibits 1-3;
- (4) State's Exhibits 1-32;
- (5) State's Exhibit 40.

I certify that this designation contains no matter which is irrelevant to this appeal.

July 5, 2018



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ATTORNEY FOR APPELLANT

**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 05, 2018.



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Appellate Defender

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Charles Claston Brown, 250064, at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 5th day of July, 2018.

Taylor D Gilliam  
Appellate Defender  
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 5th day of July, 2018.

(L.S)

Notary Public for South Carolina  
My Commission Expires: May 12, 2027.