ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICHARD JONES,

APPELLANT

APPELLATE CASE NO. 2012-212542

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to grant a directed verdict to the charge of manufacturing methamphetamine when the State failed to present any substantial evidence beyond a reasonable doubt that appellant was the person manufacturing the drug?

STATEMENT OF THE CASE

Appellant was convicted of manufacturing methamphetamine after a jury trial held before the Honorable William P. Keesley in Lexington County on July 11 – 13, 2012. A sentence of ten (10) years was imposed. Eric Drylie, Esquire, and Elizabeth Fullwood, Esquire, were the defense attorneys. Michael Ross, Esquire, was the assistant solicitor.

This appeal follows.

ARGUMENT

The trial court erred in refusing to grant a directed verdict to the charge of manufacturing methamphetamine because the State failed to prove beyond a reasonable doubt that appellant was the person manufacturing the drug.

On November 19, 2010, an explosion occurred on the property appellant was living. As a result of the explosion, there was a fire. A fire chief who was driving by saw the smoke and he stopped at the scene. A deputy responded to the scene as did a narcotics officer. All three could smell ether which is commonly used in the manufacture of methamphetamine. The evidence led the narcotics team to conclude that appellant was manufacturing methamphetamine in a garage/workshop near his mobile home. (Tr. p. 111, line 15 – p. 117, line 5).

Appellant's defense was that he was not the person manufacturing the drugs. One of the appellant's friends, Scott Peacock, came by the house with one of his friends to work on a transmission on a truck that he had left on appellant's property. Appellant had all the tools needed to do the work in his garage/workshop. Unbeknownst to appellant, Scott Peacock and his friend were using the shop to manufacture methamphetamine. (Tr. p. 117, line 9 – p. 120, line 5; Tr. p. 339, line 10 – p. 351, line 3).

At the conclusion of the State's case, defense counsel moved for a directed verdict because the State failed to prove appellant was the person who was manufacturing the drugs. The trial court denied the motion. (Tr. p. 330, line 7 – p. 331, line 11). That ruling was in error.

Due process as guaranteed by the Fourteenth Amendment requires "that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof—

defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense." Jackson v. Virginia, 443 U.S. 307, 316, 99 S.Ct. 2781, 2787 (1979).

Our Court has held:

> [T]he trial judge is concerned with the existence or non-existence of evidence, not with its weight; and, although he should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced. [Emphasis added].

State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924, 926 (1955); State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989), cert denied, 493 U.S. 895, 110 S.Ct. 246 (1989).

In applying this standard, our Court has held that evidence which is "sufficient to raise a strong suspicion of the guilt of the accused" is not sufficient to constitute "any evidence from which the guilt of the accused may be fairly and logically deduced." State v. Totherow, 263 S.C. 275, 210 S.E.2d 228, 230 (1974). See, also, State v. Turner, 117 S.C. 470, 109 S.E. 119, 120 (1921). The motion for directed verdict should be granted, therefore, "where evidence merely raises a suspicion of guilt, or is such to permit the jury to merely conjecture or to speculate as to the accused's guilt. State v. Brown, 267 S.C. 311, 227 S.E.2d 674, 677 (1976), citing State v. Matarazzo, 262 S.C. 662, 207 S.E.2d 93, cert. denied, 420 U.S. 945 (1974). "If the evidence is consistent with both innocence and guilt it cannot support a conviction." United States v. Varoz, 740 F.2d 772, 775 (10th Cir. 1984); United States v. Ortiz, 445 F.2d 1100, 1103 (10th Cir 1971). Guilt is only to be found when there is

a "rationally supportable state of near certitude." Evans-Smith v. Taylor, 19 F.3d 899, 906 (4th Cir 1994).

In this case, the State simply failed to prove that appellant was the person who was manufacturing the meth.

CONCLUSION

A directed verdict of not guilty should be granted in appellant's favor.

Respectfully submitted,

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of February, 2013.

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APPELLATE CASE NO. 2012-212542

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Richard Jones 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 William P. Keesley, which was held on July 13, 2012, 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 Richard Jones.

Respectfully submitted,

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of February, 2013.

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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(s);
(2) Entire Trial Transcript (July 11 – 13, 2012)

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

February 4th, 2013

Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
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Attorney for Appellant

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CERTIFICATE OF SERVICE

The undersigned attorney 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 Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC; and a true copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Richard Jones, #237649 at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 4th day of February, 2013.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 4th day of February, 2013.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.