

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Georgetown County

Steven H. John, Circuit Court Judge

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DEC 04 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CHRISTOPHER MILLER,

APPELLANT

APPELLATE CASE NO. 2011-197146

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FINAL REPLY BRIEF OF APPELLANT

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### **STATEMENT OF ISSUE IN REPLY**

The directed verdict issue Appellant asserts on appeal is preserved for this Court's review where Appellant argued in his directed verdict motion to the Trial Court that there was no competent and substantial evidence reasonably tending to prove that Appellant was guilty of criminal conspiracy. Furthermore, the Trial Court erred in failing to grant Appellant's motion for directed verdict where the State failed to prove any facts that would reasonably support an agreement between Appellant and co-defendant Keri Pope or anyone else to commit murder and where the evidence presented by the State at most merely raised a mere suspicion of Appellant's alleged guilt.

## ARGUMENT

**The directed verdict issue Appellant asserts on appeal is preserved for this Court's review where Appellant argued in his directed verdict motion to the Trial Court that there was no competent and substantial evidence reasonably tending to prove that Appellant was guilty of criminal conspiracy. Furthermore, the Trial Court erred in failing to grant Appellant's motion for directed verdict where the State failed to prove any facts that would reasonably support an agreement between Appellant and co-defendant Keri Pope or anyone else to commit murder and where the evidence presented by the State at most merely raised a mere suspicion of Appellant's alleged guilt.**

In its brief, the State first contends that Appellant Christopher Miller's argument that he is entitled to a directed verdict on the charge of criminal conspiracy is not preserved for review. The State further asserts that Miller conceded at trial that the State presented evidence that he participated in a conspiracy.

Contrary to the State's argument, the trial court record establishes that Miller moved for a directed verdict on the basis that the evidence presented at trial did not support the criminal conspiracy charge against Miller. As a part of the directed verdict motion, Miller's attorney argued to the Trial Court: "But we would argue that as far as conspiracy, there's no competent evidence to prove it." July 28, 2011. R. 816, ll. 18-19. Miller's attorney further argued: "So we would submit that there's no competent evidence whatsoever, that there's no substantial evidence that reasonably tends to prove his guilt or from which guilt may be fairly and logically deduced. We therefore ask the Court to direct a verdict as to Chris Miller on both indictments [murder and conspiracy]." Id. at 817, ll. 10-15.

For an alternative argument, Miller's attorney then asserted: "However, if Your Honor found there was [evidence of a conspiracy] as a matter of law, Mr. Miller withdrew from the conspiracy based on the only testimony that's involving the conspiracy which would be Bruce Richardson saying that they planned to shoot and he backed out." Id. at 816, ll. 19-24.

Therefore, while Miller did make the alternative argument that he withdrew from any conspiracy, Miller also clearly argued to the Trial Court that there was no substantial and competent evidence supporting the criminal conspiracy charge. Miller accordingly did not concede that the State presented evidence of a conspiracy, and the issue on appeal that Miller is entitled to a directed verdict on the criminal conspiracy charge where the evidence only raises a mere suspicion of Miller's alleged guilt is properly preserved for this Court's review.

As to the merits of the directed verdict issue, the State concedes that it was unable to identify the other members of the alleged conspiracy. The State focuses almost exclusively on Miller's alleged statement to Bruce Richardson that he "was supposed to go in and shoot [Joey Pope]" as sufficient evidence that Miller participated in a conspiracy. The phrase "was supposed to go in" is much too vague to reasonably tend to prove that Miller had an agreement with someone else to murder Joey Pope and only raises a mere suspicion that Miller is guilty of criminal conspiracy. See Appellant's Brief, p. 19. This evidence required the jury to speculate as to Miller's guilt on the charge of conspiracy and engage in decision making where the evidence only raised a mere suspicion of guilt.

The trial court must grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty. See State v. Odems, 395 S.C. 582, 590, 720 S.E.2d 48, 52 (2012); State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011); State v. Arnold, 361 S.C. 386, 389-90, 605 S.E.2d 529, 531 (2004). The Trial Court therefore erred in failing to grant a directed verdict for Miller on the charge of criminal conspiracy where the evidence at the most only raises of mere suspicion of Miller's guilt.

**CONCLUSION**

For the reasons set forth herein and in the Appellants' Brief, Appellant Christopher Miller respectfully requests that this Court reverse his conviction for criminal conspiracy under S.C. CODE ANN. § 16-17-410 and issue an Order of Acquittal.

Respectfully submitted,



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Carmen V. Ganjehsani  
Appellate Defender

ATTORNEY FOR APPELLANT

This 4<sup>th</sup> day of December, 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

December 4<sup>th</sup> 2013



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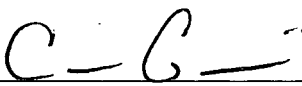
V.

CHRISTOPHER MILLER,

APPELLANT


CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Reply Brief of Appellant in the above referenced case has been served upon Julie Kate Keeney, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 4<sup>th</sup> day of December, 2013.

  
Carmen V. Ganjehsani  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 4<sup>th</sup> day of December, 2013.

  
(L.S.)  
Notary Public for South Carolina  
My Commission Expires: July 3, 2023.