ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Beaufort County

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DESMOND GREEN,

APPELLANT

APPELLATE CASE NO. 2015-000726

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. Whether the trial court erred in admitting the testimonial, non-emergent dispatch calls with the alleged victim where their admission violated the Confrontation Clause and, and even if non-testimonial, the statements did not fall under any hearsay exception?

II. Whether the trial court erred in admitting a portion of the officer's body camera recording where the statements did not fall under any hearsay exception and were irrelevant?

III. Whether the trial court erred in denying Appellant's motion for directed verdict where the State failed to present any evidence of the *corpus delecti* of criminal domestic violence aside from Green's alleged admission and where the State failed to present substantial circumstantial evidence that Appellant committed criminal domestic violence?

STATEMENT OF THE CASE

On January 29, 2015, the Beaufort County grand jury indicted Appellant Desmond Green for one count of criminal domestic violence, third offense. R. 110.

On March 25, 2015, Green proceeded to trial before the Honorable George C. James and a jury. Green was represented by Jessica Saxon and Arie Bax, and the State was represented by Hunter Swanson and Bryan Holland. R. 30 – 31.

Green was found guilty as charged. R. 108, ll. 1-3. Judge James sentenced Green to four years of incarceration. R. 109, ll. 12-14.

This appeal follows.

ARGUMENT

I.

The trial court erred in admitting the testimonial, non-emergent dispatch calls with the alleged victim where their admission violated the Confrontation Clause and, and even if non-testimonial, the statements did not fall under any hearsay exception.

Introduction

Green was convicted of criminal domestic violence, third offense, against Chyvonne Michelle Robinson. R. 110; R. 108, ll. 1-3. Robinson did not testify at Green's trial.[1] Thus, the only evidence that the State presented was the non-emergent dispatch telephone calls allegedly made by Robinson, a portion of the police officer body camera recording, photographs of Robinson taken at the scene, and two recorded "jail calls" placed by Green while at the county detention center. The trial judge denied the majority of defense counsel's motion in limine and overruled her objections to admission of the State's evidence during trial. The trial court also denied the motion for directed verdict, despite characterizing the State's case as being "held together with paper clips" and finding it to be "one of the weakest, if not the weakest case that [he had] ever let go to a jury." R. 48, ll. 9-10; R. 96, ll. 20-21; R. 97, ll. 1-3.

Relevant Facts

Over defense counsel's objection, the State introduced the non-emergent dispatch call allegedly placed by Robinson on the night of the alleged incident, and the return call

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[1] The solicitor indicated that the victim had "constantly informed [the solicitor's] office that she has no desire to pursue any of these charges" and that they were unsuccessful in their attempts to subpoena her. R. 6, l. 6 – 7, l. 6; R. 42, ll. 12-18. The solicitor did not argue that Robinson's failure to appear was procured by any wrongdoing on Green's part, thus he did not forfeit his Confrontation right. See Davis v. Washington, 547 U.S. 813, 126 S.Ct. 2266 (2006).

made by dispatch back to that telephone number. R. 57, l. 24 – 58, l. 10. The following exchange occurred in the first call to dispatch:

DISPATCHER:	Communications, Alice.
CALLER:	Uh, yes, how you doin'?
DISPATCHER:	I'm fine and you?
CALLER:	Alright. I have a question?
DISPATCHER:	Okay.
CALLER:	How can I get somebody from my house that have [sic] a trespassing notice on them?
DISPATCHER:	Are they there now?
CALLER:	Yes?
DISPATCHER:	What's your address? Hello, m'am? M'am? Hello?

State's Exhibit 1 ("911" call).[2] Dispatch then dialed the number back and the following exchange occurred:

CALLER:	Hello.
DISPATCHER:	Yes, you just called in to dispatch?
CALLER:	Um, yes, is there any way an officer can come out to my house?
DISPATCHER:	Yes, we already have them on the way. What's going on?
CALLER:	Um, me and my baby daddy having problems. He ain't [sic] even supposed to be here and I need them to escort him from here.
DISPATCHER:	Okay; what is his name?
CALLER:	Desmond Green.
DISPATCHER:	Is he white, black or Hispanic?

[2] State's Exhibit 1 is on file with this Court.

State's Exhibit 1 ("911" call). The third call went to voicemail.

Defense counsel argued that the calls were not related to any on-going emergency and were testimonial hearsay. Counsel noted that the call was to a non-emergent dispatch line regarding a trespass and the caller sounded calm and hung up twice. The solicitor argued that the questions being asked by the dispatcher were not "for the purposes of this trial" but rather to determine if there was an emergency. He further argued that the statements fell under the "present sense impression" exception to the hearsay rule. R. 29, ll. 1-25; R. 34, l. 23 – 40, l. 24.

While the trial judge required defense counsel to make contemporaneous objections, his preliminary ruling was that the dispatch calls were nontestimonal. He found that "a reasonable person in her position would [not] expect those statements would ever [have] been recorded as testimony in any type of proceeding." R. 43, l. 15 – 44, l. 3; R. 47, ll. 1-7. Though he found that the statements were hearsay, offered for the truth of the matter asserted, the judge determined that they fell under the present sense impression exception. R. 44, ll. 4-17. The trial court overruled the contemporaneous objection made when the recording of the calls was offered into evidence. R. 57, l. 24 – 58, l. 10.

Discussion

Testimonial Statements

The alleged victim's statements to the dispatch operator were testimonial because they were not made to address an ongoing emergency. The Confrontation Clause of the Sixth Amendment provides: "In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him." U.S. CONST. AMEND. IV; see also S.C. CONST. ART. I, §14. In Crawford v. Washington, 541 U.S. 36, 53–54, 124 S.Ct.

1354, 1365 (2004), the United States Supreme Court held that this provision bars "admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination."

In Davis v. Washington, 547 U.S. 813, 822, 126 S.Ct. 2266, 2273-74 (2006), the Court provided guidance on how to determine whether a statement is testimonial, holding:

> Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.

Though the Davis Court ultimately determined that the 911 call in that case was nontestimonial, it recognized that "one *might* call 911 to provide a narrative report of a crime **absent any imminent danger**." Id. at 827, 126 S.Ct. at 2276 (emphasis added). Thus, the Davis Court did not hold that *all* 911 calls are nontestimonial. Further, the Court warned against vitiating constitutional guarantees because they may result in "allowing the guilty to go free." Id. at 833, 126 S.Ct. at 2280.

In the present case, the call was placed to non-emergent dispatch regarding a possible violation of a no trespass order. The caller began by asking the dispatcher how she was doing and stated that she was "**alright**." She then told the dispatcher that she had a question. There was no urgency in her voice. In the second, return call, the caller answered the phone "hello" and indicated that she and her "baby daddy" were "**having problems**" and she wanted him "escorted" from the property. State's Exhibit 1 ("911" call). There was no "cry for help" and the call did not show the same immediacy of the call in

Davis. See Davis, 547 U.S. at 832, 126 S.Ct. at 2279. The caller expressed irritability with the trespasser, not an emergency. Thus, the statements were testimonial, even if there admission would have initially been intended for use at a hearing for contempt or trespass.

No Applicable Hearsay Exception

Assuming *arguendo* that the statements to the dispatch operator were nontestimonial, they were hearsay. The trial court erred in finding that the present sense impression to the rule against hearsay was applicable.

Rule 803(1), SCRE, defines a "present sense impression" as "[a] statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter." "There are three elements to the foundation for the admission of a hearsay statement as a present sense impression: (1) the statement must describe or explain an event or condition; (2) the statement must be contemporaneous with the event; and (3) the declarant must have personally perceived the event." State v. Hendricks, 408 S.C. 525, 533, 759 S.E.2d 434, 438 (Ct.App.2014).

In the first call, the statement to the dispatch operator that the caller had "a question" and subsequent question "how can I get somebody from my house that have [sic] a trespassing notice on them" were not descriptions or explanations of any event or condition. At most the victim's statement that she was "alright" and response "yes" to whether "they were there now" were the only the portions of the first call that amounted to a description of a condition.

Regarding the second call, the caller's first statement was a question whether there was any way an officer could come out to her house, which did not describe or explain an event. Even if her statement "me and my baby daddy having problems" was a description

of a contemporaneous event, the subsequent response, based on her prior knowledge, that "his name" was "Desmond Green" was not.

Prejudice to Appellant

In light of the inapplicability of any hearsay exception, the Court must evaluate whether Green was prejudiced by the admission of the improper hearsay evidence. See State v. Borroughs, 328 S.C. 489, 502, 492 S.E.2d 408, 414 (Ct. App. 1997). The solicitor encouraged the jury to draw inferences from and speculate about the little evidence that it had against Green without the alleged victim's testimony. R. 100, l. 12 – 103, l. 12. Despite a lack of evidence as to the identity of the caller, the solicitor argued that Robinson made the dispatch call. R. 102, ll. 12-13. Further, it was only in the call to dispatch that the caller referenced Green, which allowed the officer to say that he developed Green as a suspect. R. 75, ll. 6-18. The State also relied on the use of the phrase "baby daddy" as evidence that Green was a "household member" of the alleged victim. R. 20, l. 21 – 21, l. 9; R. 34, l. 21 – 35, l. 5; see S.C. CODE ANN. § 16-25-20. Without the admission of this improper evidence the State would not have been able to prove the "household member" element of criminal domestic violence.[3]

[3] The solicitor sought to admit the Computer Aided Dispatch (CAD) report and Computer Application on Public Safety (CAPS) report, which were generated in relation to the dispatch call. The trial court sustained defense counsel's objection to the reports, thus the only admitted evidence of the household member status was the use of the term "baby daddy" in the dispatch call and there was no admitted evidence to indicate that the alleged victim, Robinson, was the caller. R. 34, l. 21 – 35, l. 5; R. 59, l. 8 – 68, l. 5.

II.

The trial court erred in admitting a portion of the officer's body camera recording where the statements did not fall under any hearsay exception and was irrelevant.

Relevant Facts

The Court admitted a portion of the body camera recording from the night of the alleged incident. The video was poorly lit but showed the officers and the alleged victim approach each other in the driveway or yard next to a trailer. Once the audio turned on, the officers asked the alleged victim if "he" was inside. She responded "No, he took off running down the road." State's Ex. 2 (Body camera video).[4] The officer admitted that the initial call was for an escort for trespassing but said it "developed" into a criminal domestic violence call. R. 22, ll. 1-20.

Based on the solicitor's averments during the pre-trial motions hearings, the remainder of the video was not played because it was conceded to be testimonial.[5] R. 19, ll. 1-21; R. 24, ll. 6-11; R. 25, ll. 13-21; R. 33, l. 10 – 34, l. 5; R. 45, l. 8 – 46, l. 18; R. 47, l. 11 – 48, l. 2.

Defense counsel argued that the portion of the video the State sought to introduce was irrelevant and meant to "inflame the passions of the jury." R. 24, ll. 14-21. The solicitor argued that video "set the stage" and showed that the victim was distraught, crying, and bleeding when police arrived. He also argued that the jury could infer flight from the statement "he ran off down the road." R. 24, l. 22 – 26, l. 4; R. 100, ll. 19-21. In response

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[4] State's Exhibit 2 is on file with this Court.

[5] Appellate counsel estimates that the admitted portion of Exhibit 2, the body camera video, was from 00:26:29 (the beginning) until 00:27:54.

to the trial court's questions of why the statements were not hearsay, the solicitor responded that it was information "learned in the course of his [the officer's] investigation." R. 45, l. 8 – 46, l. 18.

During the initial pre-trial motions hearing, the trial court found that "the bod mi[c] stuff doesn't implicate the Defendant." He noted that the solicitor was using the jail calls to circumstantially link Green to the alleged incident. R. 28, ll. 15-19. Nonetheless, over defense counsel's objection, the trial court admitted the portion of the body camera video that the solicitor sought to introduce. R. 73, l. 2 – 74, l. 9.

Discussion

The solicitor claimed to have two purposes in introducing the body camera video, to establish that the victim was distraught, crying, and bleeding, and to evidence flight. The obvious underlying purpose was to allow the jurors a chance to see the uncooperative victim whose testimony the solicitor was unable to procure for trial. Neither the solicitor nor the trial court identified what exception the hearsay statements in the video fell under. The statement "he took off running down the road" was not a present sense impression because it described a past event. See Rule 803(1), SCRE. It was also not an excited utterance because the alleged victim was not under excitement or stress from the person running away. See Rule 803(2), SCRE.

Further, the video was not relevant, as even the trial court found that it did not implicate Green. See R. 28, ll. 15-19; Rules 401 and 402, SCRE. While the solicitor mentioned "he ran off down the road" in his closing argument, he never argued to the jury that such was evidence of flight. R. 100, ll. 19-21; R. 98, ll. 13-22; R. 25, ll. 14-16. Such argument would likely have been improper because, with the sparse evidence presented, the

State failed to show that "the totality of the evidence create[d] an inference that the defendant had knowledge that he was being sought by the authorities." State v. Walker, 366 S.C. 643, 655, 623 S.E.2d 122, 128 (2005).

While an uncooperative victim is frustrating, it does not allow the admission of otherwise improper evidence. Here, the solicitor improperly sought to cure its "missing witness" problem by introducing hearsay evidence that contained irrelevant, prejudicial information.

III.

The trial court erred in denying Appellant's motion for directed verdict where the State failed to present any evidence of the *corpus delecti* of criminal domestic violence aside from Green's alleged admission and where the State failed to present substantial circumstantial evidence that Appellant committed criminal domestic violence.

<u>Relevant Facts</u>

At the close of the State's case, defense counsel made a motion for directed verdict. Defense counsel reiterated its arguments that much of the State's evidence was inadmissible, but added that the State failed to connect the information. She noted that the State failed to offer any proof of who made the call to dispatch, requiring an assumption on the part of the jury that the call was placed by Robinson. Further, the State failed to offer any proof that Green was a household member other than the dispatch call referencing him as the caller's "baby daddy." While the first jail call also referenced a need to "take care of the kids," it did not identify to whom those children belonged. R. 89, l. 2 – 91, l. 1; R. 94, l. 17 – 95, l. 6; State's Ex. 3, Jail Calls (call #1).[6]

In the second jail, Green said "Listen, listen. Remember when I said I hit her in the head with that chair? That's, that's – and I, I, I ended up getting robbed last night, right?" State's Ex. 3, Jail Calls (call #8).[7] Defense counsel argued that the State failed to

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[6] State's Exhibit 3 is on file with this Court.

[7] The solicitor was unable to provide a redacted copy of the jail call CD to be put into evidence. Instead he played only two of the nine calls on the disc and muted the references to Green being charged with a third offense and the third party statement's "You got charged for being around Michelle [Robinson]" and "You had a CDV charge for being around somebody that you ain't supposed to be around." Based on the discussions and argument in the record, appellate counsel avers that the first (-015936) and eighth (-172122) calls were those played for the jury. It was not clear whether Green's statements about what he read in the police report were played. <u>See</u> R. 4, l. 10 – 6, l. 21; R. 44, l. 18 – 45, l. 8; R. 49, ll. 11-16; R. 85, ll. 2-12; R. 101, l. 2 – 102, l. 5.

corroborate Green's statement by proof of the *corpus delecti*, such that that Green was entitled to a directed verdict. R. 91, ll. 2-20; see also R. 9, ll. 7-13. She concluded by stating that "everything is circumstantial and the law requires substantial circumstantial evidence." R. 92, ll. 15-16.

The solicitor argued that the *corpus delecti* was shown by the photographs, body camera video, testimony from the responding officer, and call to the dispatcher. He admitted that the case was "largely" circumstantial, but cited the jail calls as direct evidence of guilt. The solicitor argued that in addition to the jail calls: "[W]e can put Mr. Green at the scene with the victim. We can put the victim injured. We can put her saying he ran off down the road. We can put Lance Corporal Breland saying that he developed Mr. Green as a suspect." R. 92, l. 18 – 94, l. 14.

The trial court denied the motion for directed verdict. The judge said that "were it not for the phone calls from the jail, this case would be dismissed." The other evidence, the judge said, provided "bits and pieces" that amounted to only "mere suspicion." The court found that in the first phone call Green told Robinson to "make something up" and tell the judge they were robbed.[8] The trial judge then moved on to the second call, made to an unknown female, and determined that the jury could conclude that Green said "You know when I told you that I hit her in the head with that chair." R. 95, l. 11 – 96, l. 12.

[8] The solicitor corrected the judge's misunderstanding that Green was asking the alleged victim to say that the injury occurred in a robbery. Rather, Green was robbed on the night before or of his arrest on November 12th, almost one month after the alleged incident. He was asking Robinson to tell the judge that they could not afford to post bond due to the robbery. See State's Ex. 3, Jail Calls (call #1).

The trial court ruled:

> **I think the case is held together with paper clips.** But what I've got to decide is whether or not there's direct evidence or substantial circumstantial evidence that would allow a reasonable jury to conclude that he committed this offense. I don't know what the jury is going to do, but I'm going to allow the jury to resolve that question because **this is probably one of the weakest, if not the weakest case that I've ever let go to a jury.** But I still think there's enough there.

R. 96, l. 20 – 97, l. 3 (emphasis added). The defense did not present any evidence and renewed all of her prior objections and motions. R. 99, ll. 11-17.

Discussion

i. Directed Verdict should have been granted pursuant to the Corroboration Rule.

The legal definition of confession is restricted to acknowledgment of guilt and does not apply to mere statement[s] of fact from which guilt may be inferred. State v. Osborne, 335 S.C. 172, 176, 516 S.E.2d 201, 202 (1999) (quotations and citations omitted). In the jail call, Green said "You remember when I said I hit her in the head with that chair? I ended up getting robbed last night." State's Exhibit 3, Jail Calls (call #8). There is no indication who the "her" is that Green refers to in the call. Since almost one month had passed between the alleged incident and Green's arrest, he may well have been referring to someone other Robinson. Thus, his statement is at most an admission and not a confession. Regardless, the corroboration rule applies. Id. at 178, 516 S.E.2d at 203-04.

"A conviction cannot be had on the extra-judicial confessions of the defendant unless corroborated by proof *aliunde* of the *corpus delicti*." State v. Williams, 321 S.C. 381, 384, 468 S.E.2d 656, 657 (1996); State v. Osborne, 335 S.C. 172, 175, 516 S.E.2d 201, 202 (1999). In order to satisfy the corroboration rule, the State must provide "sufficient independent evidence which serves to corroborate the defendant's extra-judicial

statements and, together with such statements, permits a reasonable belief that the crime occurred." Osborne, 335 S.C. at180, 516 S.E.2d at 205. Otherwise, the trial court must grant a directed verdict in the favor of the defendant. State v. McCombs, 335 S.C. 123, 128, 515 S.E.2d 547, 549 (Ct. App. 1999).

The *corpus delecti* of criminal domestic violence is: (1) cause; (2) physical harm or injury; (3) to a member of one's own household, or alternatively, (1) offer or attempt to cause (2) physical harm or injury; (3) to a member of one's own household; (4) with apparent present ability under circumstances; (5) reasonably creating fear of imminent peril. S.C. CODE ANN. § 16-25-20(A). Here, the allegation was that Green caused physical harm or injury to Robinson, specifically resulting in a cut to the back of her head. Apart from the jail calls, the State's evidence consisted of the unknown caller's statements to dispatch regarding a trespasser and the photographs taken by the police when they arrived at scene twelve minutes after the first call was made. There was no evidence admitted of how that injury occurred. Instead, the State wanted the jury to speculate that the injury resulted from the alleged victim being hit in the head with a chair, even though the solicitor presented no evidence to support that inference. The trial judge recognized the weakness of the other evidence and repeatedly said that without jail call, he would have dismissed the case. R. 93, ll. 5-6; R. 95, l. 11 – 96, l. 8. Thus, because the solicitor failed to provide "proof *aliunde* of the *corpus delicti*," directed verdict should have been granted in Green's favor.

ii. Directed Verdict should have been granted due to the lack of substantial circumstantial evidence.

Even if this court finds that sufficient evidence of the *corpus delecti* was presented, the directed verdict motion should have been granted because the State did not present any direct evidence or substantial circumstantial evidence of criminal domestic violence.

The trial court erred in finding the Green's "admission" was direct evidence. R. 93, ll. 3-6. "Unlike direct evidence, evaluation of circumstantial evidence requires jurors to find that the proponent of the evidence has connected collateral facts in order to prove the proposition propounded—a process not required when evaluating direct evidence." State v. Logan, 405 S.C. 83, 97, 747 S.E.2d 444, 451 (2013). "Analysis of circumstantial evidence is plainly a more intellectual process." Id. at 97-98, 747 S.E.2d at 451.

Our Supreme Court has observed that this analysis requires two steps: "After concluding that a particular fact is true, the individual juror is called upon to ask: First, can I infer guilt from that fact? Second, if so, is there any reasonable explanation other than guilt?" Id. (citations omitted). Similarly here, if the jurors had to engage in the two-step analysis of whether they could infer guilt from Green's statements, and if so, if there was any reasonable explanation other than guilt. See Logan, 405 S.C. at 97-98, 747 S.E.2d at 451. Because Green's statement was made almost one month after the alleged incident and referenced "her" rather than a specific person, the jurors would have been required to make an inferential step to infer guilt such that statement was **not** direct evidence. Thus, since this case involved only circumstantial evidence, the evidence was required to be "substantial" in order to survive the directed verdict motion.

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" (emphasis added)). 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 State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011)). "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) (emphasis added). "'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).

Here, the solicitor asked the jurors to make several inferences from the circumstantial evidence that would have required the jury to impermissibly speculate. Despite the lack of admissible evidence, he asked the jury to determine that the alleged victim, Robinson, was the speaker on the dispatch calls; that the injury to Robinson was inflicted by the alleged trespasser, Green; and that the injury was caused from being hit in

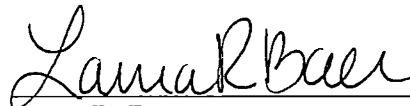
the head with a chair. R. 50, l. 21 – 52, l. 16; R. 100, l. 13 – 103, l. 12. Specifically, the solicitor argued that Green's "temper exploded on October 14, the result [of which] was the pictures, both of them, of Michelle Robinson bleeding from the back of her head." R. 100, ll. 13-18. That conclusion could not be reached by the jury without speculation.

"The jury weighs the evidence but when there is an absence of evidence, it becomes the duty of the trial judge to direct a verdict and a corresponding duty is imposed on this Court." State v. Schrock, 283 S.C. 129, 134, 322 S.E.2d 450, 452-53 (1984). Here, it was the duty of the trial judge to grant the motion for directed verdict because, viewing the circumstantial evidence in the light most favorable to the State, the evidence presented did not reasonably tend to prove Green's guilt and fails the South Carolina Supreme Court's well settled directive that circumstantial evidence that is not substantial is insufficient to go to a jury.

CONCLUSION

Based on the foregoing, Appellant Desmond Green respectfully requests that this Court reverse his conviction and grant him a new trial (Issues I and II) or enter a judgment of acquittal (Issue III).

Respectfully submitted,



Laura R. Baer
Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of May, 2016.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief 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."

May 24th, 2016

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