

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Sumter County

Honorable George M. McFaddin, Circuit Court Judge  
\_\_\_\_\_

**ORIGINAL**

THE STATE,

RESPONDENT,

V.

ALONZA KING GIBSON,

APPELLANT

APPELLATE CASE NO. 2019-000280  
\_\_\_\_\_

ANDERS BRIEF OF APPELLANT  
\_\_\_\_\_

**RECEIVED**  
OCT 31 2019  
SC Court of Appeals

LARA M. CAUDY  
Appellate Defender

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ATTORNEY FOR APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

Did the trial judge err by refusing to direct a verdict for the offense of stalking when the state failed to present any direct evidence or substantial circumstantial evidence that Appellant engaged in a pattern of words or conduct intended to cause and did cause Gloria Glisson, the alleged targeted person, or a reasonable person in Glisson's position to fear death, assault, bodily injury, criminal sexual contact, kidnapping, or damage to her property?

## STATEMENT OF THE CASE

A Sumter County grand jury indicted Appellant on July 6, 2017 for stalking. R. 178-179. His case was called to trial on February 11, 2019 before the Honorable George M. McFaddin. R. 1. Assistant Solicitor Bronwyn McElveen represented the state, and Jason Bridges represented Appellant. R. 1. On February 13, 2019, the jury found Appellant guilty as indicted. R. 158, ll. 22-25. He was sentenced to five years' imprisonment. R. 162, l. 23 – 163, l. 4.

This appeal follows.

## STATEMENT OF FACTS

Appellant and Gloria Glisson knew each other as children but had not seen each other in over fifty years. R. 57, ll. 4-14. Appellant was Glisson's "so-called little boyfriend" when the two were around ten or eleven years old. R. 57, ll. 8-10. Their families also knew each other well. Glisson's cousin was married to Appellant's brother. R. 57, ll. 4-7. On March 1, 2017, Appellant drove to the home where Glisson lived with her sister, Thelma Hodge. He knocked on the door. R. 57, l. 15 – 58, l. 4. Glisson, believing the knock was from someone her brother had sent to do maintenance at the house, answered the door. R. 57, l. 24 – 58, l. 6. However, she quickly learned the man was not the individual her brother sent. R. 58, ll. 5-8. Appellant began mentioning members of Glisson's family and eventually stated he was looking for "Gloria Jean." R. 58, ll. 6-16. After Appellant identified himself, Glisson admitted she was "Gloria Jean." R. 58, ll. 17-22.

Appellant told Glisson that he really needed to talk to someone and asked if he could take her to dinner that evening. R. 58, l. 23 – 59, l. 2. Glisson, who was uncertain whether to accept the invitation, told Appellant she was "expecting a client to do her hair" and did not know whether she would be able to go to dinner. R. 59, ll. 3-5. Appellant allegedly asked for Glisson's telephone number so he could call later to see if she was available. R. 59, ll. 6-7. Glisson gave Appellant her number and he said he would call around 6:00 pm that evening. Then he left. R. 59, ll. 8-9.

Instead of calling, Appellant allegedly showed up at Glisson's house later that day. Glisson pretended she was not home. R. 59, ll. 10-22. When Glisson did not answer the door, Appellant left. He then called Glisson. R. 59, ll. 19-21. Glisson continued to pretend she was not home. She told Appellant she was on her way to Charlotte with a friend. Appellant was

“annoyed” and maintained Glisson had told him to come back to the house. She clarified that she told Appellant to call her, which is why she gave him her telephone number. R. 59, l. 22 – 60, l. 4. She ultimately told Appellant she would be back that weekend. R. 60, ll. 10-11.

Glisson did not hear from Appellant for a couple of days. That Saturday night, March 4, 2017, Appellant called her again. When she did not answer, Appellant allegedly left a voicemail. He called a second time and left another voicemail. R. 60, ll. 12-18. Glisson alleged Appellant called her a total of nine times that night. R. 63, ll. 4-6.

After Glisson did not answer Appellant’s calls, she alleged he began sending her a series of text messages over the next few days. R. 63, l. 7 – 65, l. 25. One of the messages read, “I will hang Gloria Jean Hodge soon.” R. 64, ll. 16-18. Another read, “I will be hanging you soon with a large rope [fool]. If I can’t have you, nobody else will, and I am sure. I can’t help ‘cause I love you.” R. 65, ll. 11-15. Yet another read, “I can’t leave your home until I find you. I’m under your house. Don’t you ever think I forgot about you as yet.” R. 65, ll. 16-19.

After she received these text message, Glisson reported the interactions to law enforcement and obtained a courtesy summons. However, nothing became of it. R. 66, ll. 1-11.

On March 18, 2017, Glisson saw a small red Mitsubishi car parked in the “church yard” facing her house. The church yard and Glisson’s yard were connected. While she could not see the driver, she assumed it was Appellant since he drove a similar car when he came to her house on March 1, 2017. R. 66, l. 16 – 67, l. 6. Two days later, Glisson saw a gray truck parked in the church yard. The truck repeatedly beeped its horn. While she did not see the passenger of the truck, she suspected it was Appellant. R. 67, l. 7 – 68, l. 25. Finally, around 4:30 in the morning on March 22, 2017, Glisson saw the red Mitsubishi parked in the church yard again. Her sister had to leave for work during the early morning hours. When Glisson walked her sister to the

front door, the pair spotted the car. The driver turned the car's lights on and drove from the church yard to a road beside Glisson's house. Glisson's sister followed the car until Glisson ultimately told her to go to work and she would call the police. R. 69, l. 2 – 70, l. 22. Glisson admitted she never saw the driver and could not identify him. She merely thought it was Appellant. R. 83, l. 20 – 84, l. 19.

Glisson immediately called the police. A deputy came to the house, but did not see the car. R. 70, l. 23 – 71, l. 6. Later that morning, Glisson went to the sheriff's office and gave a written statement to Investigator Shantell Ward. Glisson claimed she was afraid Appellant would hurt her. R. 71, ll. 7-14. When prompted by the assistant solicitor, Glisson said she was in fear of bodily injury, sexual assault, property damage, and injury to her family. R. 76, ll. 11-19.

Appellant was arrested the following day. He admitted to driving a red Mitsubishi and to sending Glisson the text messages. R. 104, ll. 6-7; R. 106, ll. 13-22. However, he denied appearing at her house on March 18, 2017, March 20, 2017, and March 22, 2017. R. 105, l. 22 – 106, l. 1.

The trial judge charged the jury on the lesser included offenses of first and second degree harassment. R. 154, l. 7 – 155, l. 18. The jury ultimately found Appellant guilty as indicted. R. 158, ll. 22-25.

## STANDARD OF REVIEW

“In cases where the State has failed to present evidence of the offense charged, a criminal defendant is entitled to a directed verdict.” State v. Hepburn, 406 S.C. 416, 429, 753 S.E.2d 402, 408 (2013) (citing State v. Cherry, 361 S.C. 588, 593, 606 S.E.2d 475, 478 (2004)). “During trial, when ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight.” Id. at 429, 753 S.E.2d at 408-409 (citing Cherry, 361 S.C. at 593, 606 S.E.2d at 477-478 (internal quotation marks and alteration omitted)). “The trial court should ‘grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty, as suspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof.’” Id. at 429, 753 S.E.2d at 409 (quoting Cherry, 361 S.C. at 594, 606 S.E.2d at 478) (alteration omitted). “On the other hand, ‘a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.’” Id. (quoting Cherry, 361 S.C. at 594, 606 S.E.2d at 478).

“On appeal, when reviewing a denial of a directed verdict, this Court must view the evidence and all reasonable inferences in the light most favorable to the state.” Id. (quoting Cherry, 361 S.C. at 594, 606 S.E.2d at 478) (internal quotation marks and alteration omitted); See State v. Burdette, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999); State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000) (finding that when ruling on cases in which the state has relied exclusively on circumstantial evidence, appellate courts are likewise only concerned with the existence of the evidence and not its weight). “If the state has presented ‘any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused,’ this Court must affirm the trial court’s decision to submit the case to the jury.” Id. (quoting Cherry, 361 S.C. at 593-594, 606 S.E.2d at 478).

## ARGUMENT

The trial judge erred by refusing to direct a verdict for the offense of stalking when the state failed to present any direct evidence or substantial circumstantial evidence that Appellant engaged in a pattern of words or conduct intended to cause and did cause Gloria Glisson, the alleged targeted person, or a reasonable person in Glisson's position to fear death, assault, bodily injury, criminal sexual contact, kidnapping, or damage to her property.

### *How the Issue was Presented Below*

After the state rested, Appellant moved for a directed verdict. R. 114, ll. 9-18. Defense counsel argued that neither Gloria Glisson nor her sister, Thelma Hodge, could identify the driver of the red car that was present in the church yard adjacent to Glisson's house on March 18, 2017 and March 22, 2017 nor could they identify either the driver or the passenger of the gray truck parked in the church yard on March 20, 2017. Moreover, counsel argued there was an "insufficient nexus" between the text messages, which were sent in early March, and when Appellant allegedly appeared at Glisson's house two weeks later. R. 114, ll. 9-18.

The trial judge ultimately denied the motion finding in the light most favorable to the state that there was "enough evidence to go to a jury." R. 114, ll. 19-20.

Appellant properly renewed his motion after the defense rested. R. 127, ll. 4-9.

### *Discussion*

"It is a fundamental concept of criminal law that the State must prove beyond a reasonable doubt all the elements of the offense charged against the defendant." State v. Cain, 419 S.C. 24, 30, 795 S.E.2d 846, 849 (2017) (quoting State v. Brown, 360 S.C. 581, 590, 602 S.E.2d 392, 397 (2004)) (internal quotation marks omitted). "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 that the case was properly submitted to the jury.” State v. McGowan, 347 S.C. 618, 622, 557 S.E.2d 657, 659 (2001) (citing State v. Rowell, 326 S.C. 313, 315, 487 S.E.2d 185, 196 (1997)).

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.” State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001) (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)).

Stalking is defined in S.C. Code Ann. § 16-3-1700(C) as “a pattern of words, whether verbal, written, or electronic, or a pattern of conduct that serves no legitimate purpose and is intended to cause and does cause a targeted person and would cause a reasonable person in the targeted person's position to fear: (1) death of the person or a member of his family; (2) assault upon the person or a member of his family; (3) bodily injury to the person or a member of his family; (4) criminal sexual contact on the person or a member of his family; (5) kidnapping of the person or a member of his family; or (6) damage to the property of the person or a member of his family.

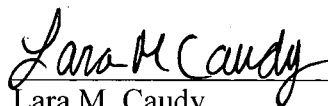
In this case, the state failed to present any evidence Appellant engaged in a pattern of words or conduct, which was intended to cause and did cause Glisson to fear for her safety. While Appellant admitted to sending the text messages to Glisson, they were merely empty threats, and were not intended to cause her any fear or apprehension. Moreover, a reasonable person in Glisson's position would not have feared death, assault, criminal sexual contact, or the like. Further, the state failed to present any evidence Appellant was the driver or a passenger in the red car or the gray truck that appeared in the church yard adjacent to Glisson's yard approximately two weeks after Appellant sent the text messages. Both Glisson and her sister, Thelma Hodge, admitted they did not see Appellant. Glisson merely suspected it was him.

Consequently, this Court should direct a verdict of acquittal in Appellant's favor.

**CONCLUSION**

Based on the foregoing argument, Appellant respectfully requests this Court direct a verdict of acquittal as to the offense of stalking.

Respectfully submitted,



Lara M. Caudy  
Appellate Defender

ATTORNEY FOR APPELLANT

This 31st day of October, 2019.

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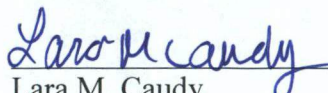
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PETITION TO BE RELIEVED AS COUNSEL  
\_\_\_\_\_

Counsel for Alonza King Gibson states:

1. She is an appellate defender for the South Carolina Office of Appellate Defense, and was appointed to represent Appellant.
2. She has reviewed the record of Appellant's trial, which was held on February 11-13, 2019 before the Honorable George M. McFaddin, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Alonza King Gibson.

Respectfully Submitted,

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

ATTORNEY FOR APPELLANT

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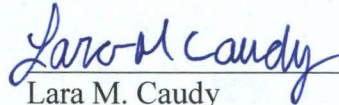
**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

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

- (1) Complete Trial Transcript Dated February 11-13, 2019;
- (2) State's Exhibit No. 1 (Waiver of Rights Form/Voluntary Statement);
- (3) State's Exhibit No. 2 (DVD of Defendant's Interview);
- (4) State's Exhibit No. 3 (Text Messages);
- (5) True-Billed Indictment;
- (6) Sentence Sheet.

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

October 31, 2019



Lara M. Caudy  
Appellate Defender

South Carolina Commission on Indigent  
Defense

Division of Appellate Defense

PO Box 11589

Columbia, SC 29211-1589

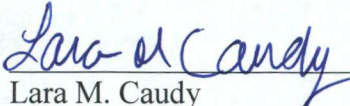
(803) 734-1330

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."

October 31, 2019.

  
Lara M. Caudy  
Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
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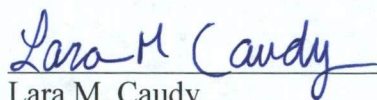
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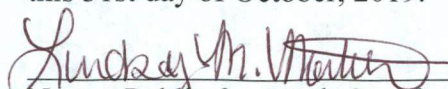
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CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant, Designation of Matter, and Record on Appeal in the above referenced case have been served upon William M. Blich, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant, Designation of Matter, and Record on Appeal have been served upon Alonza King Gibson, #215934, at Evans Correctional Institution, 610 Highway 9 West, Bennettsville, SC 29512, this 31st day of October, 2019.

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

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 31st day of October, 2019.

 (L.S)  
Notary Public for South Carolina  
My Commission Expires: October 22, 2024.