

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Berkeley County

Honorable Deadra L. Jefferson, Circuit Court Judge  
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ORIGINAL

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

EVODIO HERNANDEZ-SANTO,

APPELLANT

APPELLATE CASE NO 2019-000142  
\_\_\_\_\_

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

JESSICA M. SAXON  
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

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**STATEMENT OF ISSUE ON APPEAL**

Did the trial judge err in failing to grant the defense motion for a directed verdict where the state failed to introduce any direct or substantial circumstantial evidence that Appellant was driving the vehicle involved in the incident?

## STATEMENT OF THE CASE

On or about April 11, 2018, a Berkeley County grand jury indicted Appellant for discharging firearms into a dwelling and unlawful carrying of a pistol. R. xx. The state, represented by Daniel Duquette and F. Alex Myers, called the case to trial before the Honorable Deadra Jefferson and a jury on January 14-16, 2019. R. 1-2. Juan Tolley and Patrick Goodwyn represented Appellant. R. 2.

The jury found Appellant guilty as charged. R. 247. Judge Jefferson sentenced Appellant to two years on discharging a firearm into a dwelling and one year on the unlawful carry of a pistol, to run concurrently. R. 261-262. On January 25, 2019, Appellant filed a notice of appeal.

This brief 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

### *Relevant Facts*

On October 6, 2017 in the late evening hours a vehicle drove by the El Alamo nightclub, located in Hanahan, South Carolina, and fired shots at the building which shattered a window. R. 111-112. Law enforcement was called to the scene four days later, on October 10, 2017, by the ex-manager and handyman Benjamin Reyna. R. 63; 74; 111. The entire incident was captured on the surveillance footage from the club as well as from surveillance footage from a gas station located across the street. R. 116; 123. In the surveillance footage a silver/grey Hummer is seen first parked at the gas station across the street, then driving by the El Alamo, there is a flash from the Hummer's driver side window and the window of the club shatters. R. 112; 116-118; 127-131. Both videotapes offered specific details about the Hummer involved in the shooting to include damage to the air intake on the passenger side, and various papers and items on the dashboard to include an aftermarket organizing tray and an older model GPS bracket. R. 116-118; 127-131. None of the surveillance videotapes captures the face of the driver or any identifying features of the driver.

After some initial investigation Appellant was interviewed at the Hanahan Police Department on October 13, 2017 by Detective Flor Reyes. R. 109; 141. During the interview Appellant spoke about his relationship with the Benjamin (the ex-manager of the El Alamo) as well as his prior interactions with law enforcement. At no point did Appellant admit guilt, but he did state he would pay for damages to the El Alamo that resulted from the incident.<sup>1</sup> The

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<sup>1</sup> The statements made during the recorded interview are only referenced during closing arguments of the attorneys. Counsel for Appellant reviewed the interview in full and attests that this is an accurate, albeit brief, summary of those statements.

investigating officer next spoke with Appellant on October 19, 2017 at Appellant's house. R. 147.

While at Appellant's house Detective Reyes took photographs of Appellant's Hummer to compare to stills from the surveillance videotapes. R. 148-149. Detective Reyes and Appellant also had a conversation where Appellant stated, in response to questioning, that he was the only person who drove his vehicle. R. 164-165. As a result of the investigation, the comparison of photographs to the surveillance stills and the statements of Appellant, a warrant was issued for his arrest. R. 165. No gun or bullet was ever recovered. R. 178. No search was performed of Appellants house or vehicle to attempt to locate a gun. R. 178-179. No forensic testing of any kind was performed by law enforcement. R. 176.

#### *Discussion*

The evidence in this case confirmed that Appellant's car was involved in the incident as the damage and specific aftermarket items on the Hummer in the surveillance footage matched Appellant's car exactly. It was clear from the video surveillance and subsequent photographs of Appellant's Hummer that the two vehicles are one in the same. What the evidence in this case failed to show was who was actually driving the Hummer on the night of the incident. The state was only able to offer circumstantial evidence of the identity of the driver and it was by no means substantial.

In cases where the state primarily relies on circumstantial evidence to secure a conviction, this Court has ruled that that evidence must be substantial. A review of the online Lexico dictionary and thesaurus show that substantial means "considerable, real, weighty, or

material.”<sup>2</sup> The circumstantial evidence that the state relied on was that it was Appellant’s Hummer and Appellant had stated in an offhand statement to law enforcement that no one else drove his vehicle. This evidence merely raised a suspicion of guilt. “The circuit court should not refuse to grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. Suspicion implies a belief or opinion as to guilt based upon facts or circumstance which do not amount to proof.” State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004).

The facts in this case can be likened to numerous others in which our Supreme Court has held that the circumstantial evidence presented by the state only raised a mere suspicion of guilt. In State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000), the only evidence linking the defendant to the crime was his fingerprint found on a window screen propped up against the outside of the home. There the Court determined that the fingerprint on the screen did not prove entry when the defendant had been in and around the home on several occasions prior to the burglary. Similarly, in State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011) the Court found the evidence presented, which included various personal items of the deceased in a burn pile at defendant’s mother’s house and similar traces of the accelerate, only raised a mere suspicion that the defendant committed the crime. See also, State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984), State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004).

In the case at bar, the only thing that linked Appellant to the crime scene was his vehicle. There was no evidence that Appellant was the driver at the time of the incident. The presence of the vehicle, without more, only creates a mere suspicion of guilt. Based on the case law this required the trial court to direct a verdict in Appellant’s favor.

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<sup>2</sup> Lexico is a collaboration between Oxford University Press and Dictionary.com. The referenced synonyms can be found at <https://www.lexico.com/en/definition/substantial>.

This case can also be easily distinguished from State v. Bennett, 415 S.C. 232, 781 S.E.2d 352 (2016), and State v. Lane, 410 S.C. 505, 765 S.E.2d 557 (2014). In Bennett there was DNA and fingerprint evidence with no explanation for it being in the particular parts of the community center where it was found. In fact, the testimony in that case was that defendant would not have been in those areas of the community center. It was held that this was substantial circumstantial evidence from which a reasonable juror could find the defendant guilty.

Likewise in Lane, there evidence at trial showed a distinctive vehicle with a paper tag observed at the scene of the crime that the defendant later admitted to driving on the day of the burglary, a piece of paper with a unique username and password that was issued to defendant by the unemployment office, and that the defendant had asked his girlfriends mother to lie for him. This again was held to be substantial circumstantial evidence. No such evidence exists in the case at bar.

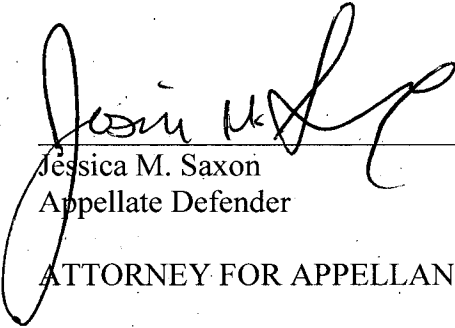
In Appellant's case there was not substantial circumstantial evidence but a substantial lack of evidence identifying Appellant as the driver of the Hummer. There was no surveillance footage that identified the driver, no cellphone records showing Appellant was in the area at the time of the incident, and no eye witnesses to testify what the driver looked like. There was, in short, no evidence that definitively placed Appellant at the scene of the crime. Further no gun was ever recovered from Appellant and no investigation into whether Appellant ever owned, borrowed or used a gun was ever conducted. In such a case, where there was a clear absence of evidence, the trial judge has a duty to direct a verdict of acquittal. State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984).

The trial court is concerned only with the existence or non-existence of evidence and in this matter the minimal evidence produced by the state in this case was not sufficient to

withstand Appellant's motion for directed verdict. The state was required to furnish considerable, real, weighty, or material circumstantial evidence in order to have the case submitted to a jury. State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011). A review of the record showed that the state failed in its duty and the trial judge erred in failing to direct a verdict of acquittal on all charges since the state did not present substantial circumstantial evidence of Appellant's guilty. Id.

**CONCLUSION**

Based on the foregoing, Appellant's convictions and sentences should be reversed and the case remanded for entry of a directed verdict acquittal.



Jessica M. Saxon  
Appellate Defender  
ATTORNEY FOR APPELLANT

This 27th day of November, 2019.

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Honorable Deadra L. Jefferson, Circuit Court Judge

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PETITION TO BE RELIEVED AS COUNSEL

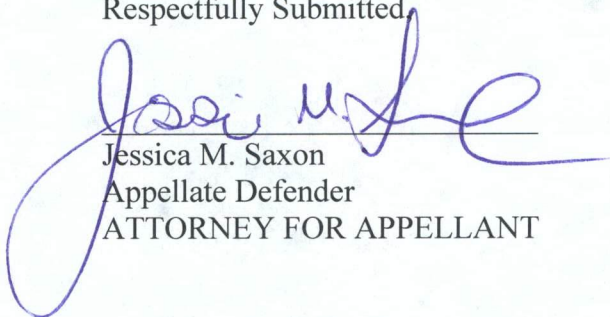
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Counsel for Evodio Hernandez-Santo states:

1. She is 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 before Judge Deadra L. Jefferson, which was held on January 14 - 16, 2019, 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, 87 S.Ct. 1396 (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 Evodio Hernandez-Santo.

Respectfully Submitted,



Jessica M. Saxon  
Appellate Defender  
ATTORNEY FOR APPELLANT

This 27th day of November, 2019.

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

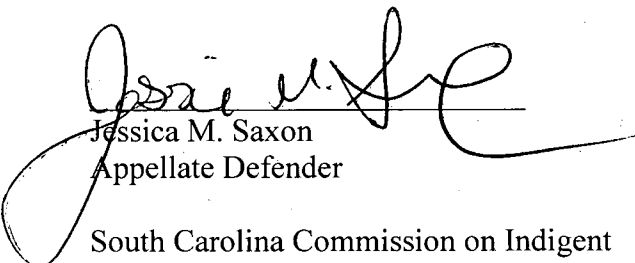
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Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s):
- (2) Transcript of Trial Held January 1, 2019.

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

November 27, 2019



Jessica M. Saxon  
Appellate Defender

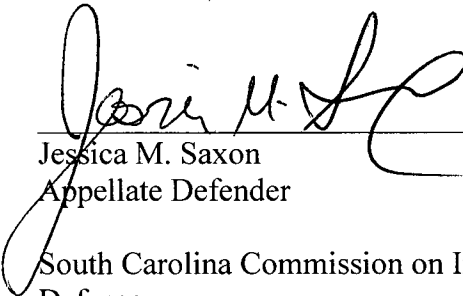
South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

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."

November 27, 2019.

A handwritten signature in black ink, appearing to read "Jessica M. Saxon", written over a horizontal line.

Jessica M. Saxon  
Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

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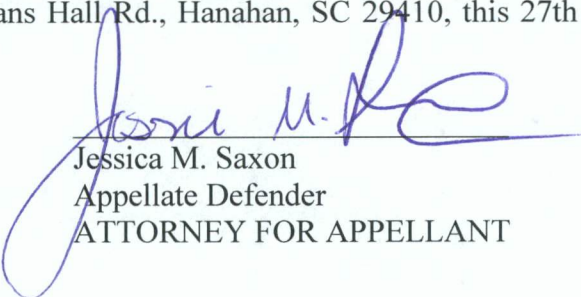
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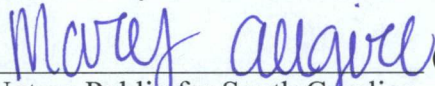
CERTIFICATE OF SERVICE

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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 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 and Designation of Matter have been served on Evodio Hernandez-Santo, at 1136 Yeamans Hall Rd., Hanahan, SC 29410, this 27th day of November, 2019.

  
Jessica M. Saxon  
Appellate Defender  
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 27th day of November, 2019.

 (L.S)  
Notary Public for South Carolina  
My Commission Expires: May 12, 2027.