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MAY 14 2020

SC Court of Appeals

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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Appeal from Cherokee County  
The Honorable J. Mark Hayes, Circuit Court Judge  
Appellate Case No. 2019-00438

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State of South Carolina ----- RESPONDENT,

-VS-

Richard Douglas Waldrup ----- APPELLANT.

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APPELLANT'S PRO SE BRIEF ON APPEAL

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Richard Douglas Waldrup 360887  
Perry C.I. - Q3  
430 Oaklawn Road  
Pelzer, South Carolina 29669

## I S S U E S O N A P P E A L

1. DID THE TRIAL COURT ERR BY DENYING APPELLANT'S MOTION FOR DIRECTED VERDICT WHERE THE EVIDENCE PRESENTED AT TRIAL DID NOT ESTABLISH ALL THE NECESSARY ELEMENTS OF BURGLARY?
2. THE EVIDENCE PRESENTED AT TRIAL WAS INSUFFICIENT AND THE STATE FAILED TO MEET THEIR BURDEN OF PROOF.

## S T A T E M E N T O F T H E C A S E

On June 22, 2017, the Appellant was indicted by a Cherokee County grand jury for burglary, first degree even though there was no physical evidence to substantiate such a charge. Appellant's case was called to trial on March 5, 2019, before the Honorable J. Mark Hayes II, and a jury. Appellant was represented at trial by Travis Moore, Esquire. Assistant solicitor Adrienne Barry and deputy solicitor Kim Leskanic represented the state.

On March 6, 2019, the jury found appellant guilty of burglary, first degree and Judge Hayes sentenced appellant to a term of twenty years imprisonment without the possibility of parole. This appeal now follows.

## F A C T S A N D A R G U M E N T S P R E S E N T E D

At trial the State offered absolutely no physical evidence of burglary. The home owner, Teresa Smith and her son, Billy Austin provided conflicting testimony at trial. The police reports and investigation materials are contradictory to the testimony of State witnesses. Appellant testified for the defense concerning the events on the day of this alleged burglary, and his testimony clearly rebutted the testimony given by Teresa Smith and Billy Austin.

The prosecution offered evidence of appellant's prior criminal record, specifically his prior burglary convictions, in an effort to establish proof of the alleged burglary appellant was on trial for. It was improper to introduce appellant's prior burglaries in the context in which they were introduced, because of the fact that his priors are not evidence of guilt in this case.

When reading Section §16-11-311, it provides four (4) ELEMENT SCENARIOS under §16-11-311(A)(1), of which, one or more can be used to establish first-degree burglary, provided that the other required elements of first-degree burglary can be established and proven. The

state's burden of proof, requires that it prove all the elements of first-degree burglary in order to sustain a guilty verdict. State v. Benton, 338 S.C. 151, 526 S.E.2d 228 (2000).

Pursuant to §16-11-311(A)(2), appellant's prior burglaries can be considered as elements to establish the offense of first-degree burglary. However, they are not evidence of guilt, and if improperly introduced during trial, they become more prejudicial than probative. Appellant makes this argument based on the fact that the state's introduction of this evidence, without the support of any direct physical evidence, wrongfully influenced the jury's decision.

Due to the state's lack of sufficient evidence, introduction of appellant's prior convictions for burglary, mistakenly implied guilt without the support of any physical evidence, due to the fact that the language from §16-11-311(A)(2), is included as an element of the offense during the Court's charge to the jurors, prior to their deliberations.

The State has offered absolutely no PHYSICAL EVIDENCE as proof of guilt in this case. No forensic evidence, no finger prints, no photographs of evidentiary value, and no medical reports as evidence of Teresa Smith's alleged injuries.

There was testimony that appellant was allegedly attempting to steal a "saw," yet there was no attempt at forensic testing for DNA or fingerprints. The saw itself was never introduced as evidence during the trial.

The testimonial evidence offered by the state was clearly rebutted by the appellant who testified for the defense. Because of the fact that there was no PHYSICAL EVIDENCE presented by the state, the Jury's determination was based entirely on SPECULATION, which is undeniably prohibited by law.

The state relied completely on the testimony of Teresa Smith, Billy Austin, Officer Brent Heflin, and the York County Clerk of Court, Teresa Scoggins to meet its burden of proof. However, the testimony of these witnesses does not establish the necessary corpus delicti of burglary. Appellant's rebuttal testimony contradicted the testimonial evidence presented by the state and left the jury with insufficient evidence to render a finding of guilt.

Because the evidence presented by the prosecution "merely raises a suspicion of guilt," the appellant was entitled to receive a directed

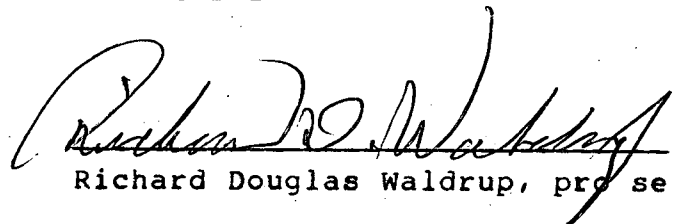
verdict of acquittal. See State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984). A defendant is entitled to a directed verdict when the state fails to produce sufficient evidence of the offense charged. State v. McHoney, 344 S.C. 85, 544 S.E.2d 30 (2001).

It's understood that a case can be submitted to the jury with only circumstantial evidence, however, it has been well settled that there must be a SUBSTANTIAL AMOUNT of circumstantial evidence which tends to prove the guilt of an accused, before it can be properly submitted to the jury. See State v. Pinckney, 339 S.C. 346, 529 S.E.2d 526 (2000).

#### C O N C L U S I O N

Because there was only MINIMAL circumstantial evidence presented at trial and absolutely no physical evidence presented by the prosecution, the trial court erred in denying appellant's motion for directed verdict. It's well settled that, the prosecution must prove EVERY ELEMENT necessary to constitute the crime with which a criminal defendant is charged. U.S. v. O'Brien, 560 U.S. 218 (2010).

In the instant case, due to the fact that the prosecution has failed to prove every element of first-degree burglary as required by law, this Honorable Court should vacate appellant's conviction and remand with instructions that he is to be released from custody, or in the alternative reverse and remand for a new trial.

  
Richard Douglas Waldrup, pro se

Dated: May 4, 2020.

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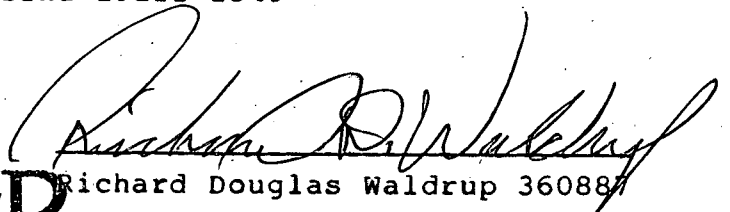
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C E R T I F I C A T E O F S E R V I C E

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The undersigned Appellant, hereby certifies that a true and correct copy of APPELLANT'S BRIEF ON APPEAL in the above captioned matter has been served on the Respondent by placing a copy of said document in the United States Mail, with First Class Postage affixed thereto and addressed as follows:

Mr. Alan Wilson  
S.C. Attorney General  
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Richard Douglas Waldrup 360887

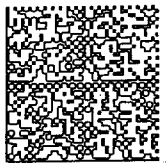
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