STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appeal from Georgetown County
The Honorable Kristi F. Curtis, Circuit Court Judge

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Appellate Case No. 2020-000134

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THE STATE, Respondent,

v.

MARISSA COHEN, Appellant.

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# INITIAL BRIEF OF RESPONDENT

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## STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to grant Appellant a directed verdict of acquittal on the charge of unlawful conduct toward a child when the State produced evidence Appellant placed her son at an unreasonable risk of harm to his life, physical health, and safety?

## STATEMENT OF THE CASE

In August 2014, a Georgetown County Grand Jury indicted Appellant for one count of arson, first degree, one count of criminal conspiracy, and one count of unlawful conduct toward a child. On January 6-9, 2020, a jury trial was held in the Georgetown County Court of General Sessions with the Honorable Kristi F. Curtis, presiding. Appellant was represented by Besscena Wilson, Esquire. The State was represented by Assistant Solicitors Alicia Richardson and Elizabeth Smith of the Fifteenth Circuit Solicitor's Office. At the conclusion of trial, the jury convicted Appellant of all three counts. Following the verdict, the trial judge sentenced Appellant to thirty-five years' imprisonment for arson, first degree, ten years' imprisonment for unlawful conduct toward a child, and five years' imprisonment for criminal conspiracy. (Tr. 651) Each sentence ran concurrently with the others resulting in an aggregate term of thirty-five years' imprisonment. Appellant then timely filed a notice of appeal and an initial brief.

## STATEMENT OF FACTS

In the early morning hours of March 29, 2014, a trailer located at 10 James Drive in the town of Andews, South Carolina was set on fire. (Tr. 107, 120, 129). First responders were initially told the trailer was abandoned and no one lived in it. (Tr. 107). After the fire was extinguished, firefighters entered the home and found the body of a twelve year-old boy inside. (Tr. 113). The body was identified as Dave "Sycience" Coombs (Victim). (Tr. 135-36). Victim was Appellant's son. (Tr. 240). Victim's cause of death was smoke inhalation. (Tr. 525). Appellant arrived at the scene of the fire shortly after first responders. (Tr. 210-11). Multiple first responders and members of Appellant's family noted Appellant was acting unusually calm, and seemed unaffected after learning of her child's death. (Tr. 124, 136, 148, 158, 214, 248). When Appellant was informed of her son's death, she immediately called Randy Collins[1] to inform him of the death. (Tr. 320). According to phone records introduced at trial, Appellant and Collins spoke by phone six times from approximately noon on March 28 to approximately 3:30 AM on the morning of March 29. (Tr. 367).

Earlier that evening, Victim went to a birthday party at the local recreation center with his friend, Ricky Nelson. (Tr. 95). Victim and Nelson left the party at approximately 11:30 pm. (Tr. 95). Victim and Nelson planned to spend the night at Nelson's house. (Tr. 95). Victim told Nelson he was going home to get some clothes before he came to Nelson's house. (Tr. 95). Victim never arrived at Nelson's home. (Tr. 95).

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[1] Randy Collins and James Miller were charged as a co-defendants with Appellant. Collins was tried and convicted of arson, first degree and criminal conspiracy in November 2018. Collins appealed his conviction and his thirty year sentence. Collins' appeal is currently pending before this Court. (Tr. 406). Miller was shot and killed by Appellant's son and Victim's older brother, Devon Coombs, in April 2015. Coombs plead guilty to voluntary manslaughter and is currently serving a sixteen year sentence. (Tr. 647).

On February 20, 2014, Appellant applied for a $25,000 contents-only insurance policy on the trailer at 10 James Drive. (Tr. 184). On March 24, Appellant rented a storage unit. (Tr. 163). Later that week, Appellant asked Benjamin "Mano" Brown and Everette Langley to help her move furniture from the trailer to the storage unit. (Tr. 102-03, 225). After Brown and Langley moved the furniture, Appellant told Brown she was going to burn her trailer down. (Tr. 227). Appellant and her three children moved into the apartment of her friend, Carolyn Montgomery, on the evening of March 28. (Tr. 204-05, 219). When Appellant and her other two children went to bed on the evening of March 28, Victim was not in the apartment. (Tr. 208-09, 219). Appellant's trailer on James Drive was significantly closer to the recreation center than the apartment Appellant slept in on the evening of March 28. (Tr. 219). At some point in the evening, Montgomery awakened Appellant and asked her where Victim was. Appellant did not know where Victim was and speculated he may have gone to the trailer. (Tr. 208-09). Montgomery left on a bicycle to go pick up Victim from the trailer. (Tr. 209). On her way to the trailer, Montgomery received a phone call from her niece informing her the trailer had burned down with Victim inside. (Tr. 210). Approximately two weeks after the fire, Appellant called her cousin, Rose Collins, and said "we gotta get rid of Mano...because he's the only one that can get me in trouble." (Tr. 251, Tr. 253, lines 5-8).

Appellant filed a claim with the insurance company on April 7, 2014. (Tr. 187). The insurance company declined to pay the claim on suspicion of arson. (Tr. 194-95). Investigator Melvyn Garrett of the Georgetown County Sheriff's Office received an anonymous tip that Appellant was involved in setting the fire. (Tr. 508). As a result of this tip, Garrett spoke with gas station attendant Charlene Scott. (Tr. 508). Scott reported that Cohen bought $20 worth of kerosene on March 28, 2014. (Tr. 172-75). Agent Brian Wright of SLED found a combination

gasoline and kerosene on the floor of two of the trailer's bedrooms. (Tr. 442). Wright determined the fire was an incendiary fire that was started with the aid of accelerant. (Tr. 488).

Collins testified on behalf of the State at trial. According to Collins, Appellant asked him to help her burn down her trailer. (Tr. 411). In exchange for Collins' help, Appellant offered to pay Collins $5,000 in insurance proceeds. (Tr. 412). Collins agreed to help Appellant burn down her trailer and suggested using kerosene to do so. (Tr. 411, 414). Collins solicited the help of James Miller to burn down the trailer. (Tr. 412). Miller agreed to help. (Tr. 412). Collins testified that Appellant arranged to have kerosene placed in a particular location inside the trailer. (Tr. 413-15). When Collins and Miller arrived, the doors to the trailer were locked. (Tr. 413-15). According to Collins, Miller lit a piece of paper on fire and threw it through the window. (Tr. 413-15). Collins claimed the two men left the scene and never saw the trailer catch on fire. (Tr. 415). At the conclusion of trial, Appellant was convicted of all counts.

## STANDARD OF REVIEW

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." State v. Morgan, 352 S.C. 359, 364, 574 S.E.2d 203, 205 (Ct. App. 2002). "On an appeal from the trial court's denial of a motion for a directed verdict, the appellate court may only reverse the trial court if there is no evidence to support the trial court's ruling." State v. Lindsey, 355 S.C. 15, 20, 583 S.E.2d 740, 742 (2003). When reviewing a denial of a directed verdict at the trial level, the appellate court "views the evidence and all reasonable inferences in the light most favorable to the State." State v. Bennett, 415 S.C. 232, 235, 781 S.E.2d 352, 353 (2016).

## ARGUMENT

**The trial judge trial judge did not err in refusing to grant Appellant a directed verdict of acquittal on the charge of unlawful conduct toward a child when the State produced evidence Appellant placed her son at an unreasonable risk of harm to his life, physical health, and safety.**

Appellant contends the trial judge erred in failing to direct a verdict of acquittal for Appellant on the charge of unlawful conduct toward a child[2]. Specifically, Appellant argues the State was required to prove Appellant knew her child was in the trailer when it was set on fire. Appellant contends that because the State failed to prove Appellant knew her son was in the trailer, the State could not prove Appellant unlawfully or maliciously caused harm to her son and thus Appellant was entitled to a directed verdict. Appellant's argument fails for two reasons. First, the State was not required to prove Appellant unlawfully or maliciously caused harm to Victim. A defendant may also be guilty of unlawful conduct toward a child if they abandon a child or place the child at an unreasonable risk of harm. Second, the State produced evidence that Appellant placed Victim at unreasonable risk of harm by not accounting for her child's whereabouts on the same night she arranged to have the child's primary residence burned down.

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[2] At trial, Appellant moved for a directed verdict of acquittal on all three charges she faced. On appeal, Appellant does not challenge the trial judge's refusal to direct a verdict of acquittal for arson, first degree nor does she challenge the accompanying thirty-five year sentence. (Initial Brief of Appellant 12). Appellant also does not challenge the trial judge's refusal to direct a verdict of acquittal for criminal conspiracy nor does she challenge the accompanying five year sentence. (Initial Brief of Appellant 1, 5, 13). Therefore, Appellant's convictions for arson, first degree and criminal conspiracy must be affirmed. Accordingly, Appellant cannot achieve any meaningful relief even if this Court reverses and remand's Appellant's conviction for unlawful conduct toward a child. See Shirley's Iron Works, Inc. v. City of Union, 403 S.C.560, 573, 743 S.E.2d 778, 785 (2013). ("An unappealed ruling is the law of the case and requires affirmance"). See also Rule 208(b)(1)(B)("Statement of Issues on Appeal. A statement of each of the issues presented for review. The statement shall be concise and direct as to each issue, and may be stated in question form. Broad general statements may be disregarded by the appellate court. Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.").

Because evidence existed that Appellant put Victim at an unreasonable risk of harm, the trial judge did not err in denying Appellant's motion for a directed verdict and thereby allowing the jury to determine the weight of that evidence.

In determining whether a directed verdict should be granted, "the trial judge shall consider only the existence or non-existence of the evidence and not its weight." Rule 19 SCRCrimP. When reviewing a denial of a directed verdict at the trial level, the appellate court "views the evidence and all reasonable inferences in the light most favorable to the State." Bennett, 415 S.C. at 235, 781 S.E.2d at 353. "On an appeal from the trial court's denial of a motion for a directed verdict, the appellate court may only reverse the trial court if there is no evidence to support the trial court's ruling." Lindsey, 355 S.C. at 20, 583 S.E.2d at 742. When an appellate court reviews the sufficiency of the evidence to support a criminal conviction, "[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319 (1979) (emphasis in original). "[I]f 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. Kelsey, 331 S.C. 50, 62, 502 S.E.2d 63, 69 (1998).

South Carolina Code § 63-5-70 makes it unlawful for the parent or guardian of a child, or a person who has custody of a child, or anyone who is responsible for the welfare of a child to do the following:

> (1) place the child at unreasonable risk of harm affecting the child's life, physical or mental health, or safety;
> (2) do or cause to be done unlawfully or maliciously any bodily harm to the child so that the life of health of the child is endangered or likely to be endangered; or
> (3) willfully abandon the child.

S.C. Code § 63-5-70. The aforementioned statute enumerates three different ways a defendant may be guilty of unlawful conduct toward a child. The plain language of S.C. Code section 63-5-70 does not require the State to prove all three ways. Rather, the statute only requires the State to prove one of the three. Furthermore, nothing in Section 63-5-70 requires the State to prove Appellant had the specific intent to hurt her child. The State merely had to prove Appellant's actions placed her child's life at unreasonable risk of harm.

Here, the State presented ample evidence that Appellant placed Victim at an unreasonable risk of harm that affected the child's life and physical safety. First and foremost, the State produced evidence Appellant conspired with Randy Collins to burn down her trailer. (Tr. 411-15). Prior to burning down the trailer, Appellant took out a $25,000 insurance policy, rented a storage unit for her furniture, and got two men to move her furniture to the storage unit. (Tr. 163, 184, 225). Appellant acknowledged to one of the men who helped her move that she planned to burn the trailer down and Appellant bought $20 worth of kerosene on the day of the fire. (Tr. 172-75, 227). Furthermore, the State produced phone records showing Appellant and Collins communicated by phone six times in the hours before and after the fire. (Tr. 367). Finally, Appellant moved into a new residence and slept at the new residence for the first time on the night of the fire. (Tr. 204-05, 219). Appellant went to sleep in the new location without Victim being present and even acknowledged Victim may have gone back to the old residence when she was asked about Victim's whereabouts by Montgomery. (Tr. 208-09, 219).

The trial judge recognized the existence of this evidence when she made the following ruling on Appellant's motion for a directed verdict on the unlawful conduct toward a child charge:

> The Court: There is evidence that she made arrangements for this fire to be set. Gave the go ahead for the fire immediately after moving, while not knowing the whereabouts of the child. And knowing this was the first night that the child would have spent away from home, which, in my thinking, increases the likelihood that he might return to the home. It looks like there were also still a number of item, personal items, in the home, clothing, beds, bicycles. Which, of course, increases the likelihood that somebody might return to the home to get those things. And specifically, this child whose whereabouts were unknown at the time the fire started.
>
> So for those reasons the motion for directed verdict is denied. I do believe that there is evidence to go forward on those charge with the Jury.

(Tr. 539, lines 10-24). The trial judge appropriately recognized the existence of evidence that showed Appellant put Victim at an unreasonable risk of harm and properly allowed the jury to determine the weight of that evidence. When viewed in the light most favorable to the State, the trial judge acted well within her discretion in denying Appellant's motion for a directed verdict. Appellant's conviction and sentence should be affirmed.

## CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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January 6, 2021

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Jan 06 2021
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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appeal from Georgetown County
The Honorable Kristi F. Curtis, Circuit Court Judge

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Appellate Case No. 2020-000134

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THE STATE, Respondent,

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

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In addition to the matter designated by Appellant, Respondent proposes the following to be included in the Record on Appeal:

1. Trial transcript dated January 6-9, 2020, p. 1-10, p. 45-651.

To facilitate the preparation of the Final Brief, Respondent requests that counsel for Appellant retain the page numbers of the trial transcript in the Record on Appeal, in addition to the new page numbers. The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

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January 6, 2021

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**PROOF OF SERVICE**

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I, Sally Ellison, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by email to the address listed in AIS and with a copy of the same to be deposited in the United States mail to:

Katherine H. Hudgins, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
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I further certify that all parties required by Rule to be served have been served.
This sixth day of January, 2021.

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**Sally Ellison**



**From:** Sally Ellison
**Sent:** Wednesday, January 6, 2021 8:43 AM
**To:** 'khudgins@sccid.sc.gov'; Stock, Chris
**Cc:** Scott Matthews; William Blitch; Victim Services; Sally Ellison
**Subject:** The State v. Marissa Cohen Appellate Case No. 2020-000134 IBOR
**Attachments:** Letter Serving IBOR State v. Marissa Cohen Appellate Case No. 2020-000134 (02460627xD2C78).pdf; IBOR State v. Marissa Cohen Appellate Case No. 2020-000134 (02460624xD2C78).pdf

Good Morning:

Attached please find the State's cover letter and Initial Brief of Respondent and Designation of Matter in the above appeal. The Initial Brief and Designation of Matter will be filed with the Court of Appeals today through the AIS One Drive System and a copy will also be provided as indicated on the Proof of Service.

Please confirm receipt of this email.

*Sally Ellison*
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