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**Apr 26 2021**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM NEWBERRY COUNTY  
The Honorable D. Craig Brown, Circuit Court Judge

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Appellate Case No. 2020-000198

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THE STATE,

Respondent,

v.

JOHN HENRY DAVENPORT, JR.,

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Appellant.

**INITIAL BRIEF OF RESPONDENT**

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## STATEMENT OF ISSUE ON APPEAL

- I. The trial judge did not err in denying Appellant's directed verdict motion because there was evidence that Appellant and Victim were household members.

## STATEMENT OF THE CASE

Appellant was indicted by a Newberry County Grand Jury for domestic violence in the first degree. Appellant proceeded to a jury trial on January 21-23, 2020, in the Newberry County Court of General Sessions before the Honorable D. Craig Brown. The State was represented by Assistant Solicitors Dale Scott and Taylor Daniel. Charles Verner, Esquire, represented the Appellant. The jury found Appellant guilty as charged. Appellant was sentenced to ten years' imprisonment. This appeal follows.

## STATEMENT OF FACTS

On October 18, 2018, Latorya Morris (Victim) was staying the night at the home of Kenyata Hunter (Hunter), Appellant's cousin. (Tr. 84). At around midnight, John Henry Davenport Jr., (Appellant) entered Hunter's home<sup>1</sup> and began attacking Victim. (Tr. 88). Hunter testified Appellant entered the home and was punching Victim in the face and body. (Tr. 89). Appellant fled from the scene in a four door red vehicle. (Tr. 93).

Yolanda Williams, a Newberry Police officer, arrived on scene. (Tr. 108). Williams testified that Victim presented with a swollen eye and was complaining of stomach pain. (Tr. 109). While on the porch talking to Victim, Williams saw the vehicle passing the location. (Tr. 109). Williams gave the vehicle and suspect description to Lieutenant Michael Wood of the Newberry Police. (Tr. 109). Wood located the vehicle and conducted a traffic stop. (Tr. 129). Appellant was placed under arrest and charged with domestic violence in the first degree. (Tr. 133).

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<sup>1</sup> Cohabitation at this residence is not at issue, Victim just so happened to be staying at her residency the night of the attack.

## STANDARD OF REVIEW

“On appeal from the denial of a directed verdict, [the Appellate] Court views the evidence and all reasonable inferences in the light most favorable to the State.” State v. Butler, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014). As the South Carolina Supreme Court recently reiterated: “[W]hen ruling on a directed verdict motion, the trial court views the evidence in the light most favorable to the State and must submit the case to the jury 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. Bennett, 415 S.C. 232, 236-37, 781 S.E.2d 352, 354 (2016) (quoting State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924 (1955)).

“Therefore, although the jury must consider alternative hypotheses, the court must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt.” Id. “Accordingly, in ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt.” Id.

Ultimately, the question is whether, in view of the evidence in the light most favorable to the State, a rational trier of fact could find all the elements beyond a reasonable doubt. See State v. Robinson, 310 S.C. 535, 539, 426 S.E.2d 317, 318 (1992) (finding “any rational trier of fact could have found all the elements of the crime beyond a reasonable doubt” in affirming the denial of a motion for directed verdict and citing Jackson v. Virginia, 443 U.S. 307 (1979)). The appellate court may only reverse the trial judge’s denial of a directed verdict motion if there is no evidence supporting the trial judge’s ruling or if the ruling is based on an error of law. State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002); State v. Dantonio, 376 S.C. 594, 603, 658 S.E.2d 337, 342 (Ct. App. 2008).

## ARGUMENT

**The trial judge did not err in denying Appellant's directed verdict motion because there was evidence that Appellant and Victim were household members.**

Appellant contends the trial judge erred in denying Appellant's directed verdict motion because the State failed to prove that Appellant and Victim were "household members" as defined by the statute. Specifically Appellant complains Victim never stayed more than one night at a time at Appellant's sister's house and the fact Victim used his sister's address to forward her mail was not evidence of cohabitation. However, the trial judge correctly denied Appellant's directed verdict motion because sufficient evidence of cohabitation was presented.

"On appeal from the denial of a directed verdict, this 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). (citing State v. Butler, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014)). On a motion for a directed verdict in a criminal case, the trial court is concerned with the existence or non-existence of evidence, not its weight. State v. Curtis, 356 S.C. 622, 633, 591 S.E.2d 600, 605 (2004). See also Rule 19(a) SCRCrimP. If the State presents any evidence which reasonably tends to prove the defendant's guilt, or from which the defendant's guilt could be fairly and logically deduced, the case must go to a jury. Id. The task of the trial court is to simply determine "whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." State v. Bennett, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016).

S.C. Code Ann. §16-25-10 defines household member as:

- (a) a spouse;
- (b) a former spouse;
- (c) persons who have a child in common; or

(d) a male and a female who are cohabitating or formerly have cohabited. S.C. Code Ann § 16-25-10(3)(a-d) (2015). The term “cohabit” is not defined in the criminal cases of South Carolina; however it has been briefly discussed within the South Carolina family law area. “Cohabitation has been defined as ‘living together in the same house.’” E.D.M v. T.A.M. 307 S.C. 471, 475, 415 S.E.2d 812, 815 (1992). “If ‘cohabitation’ is construed to mean what it primarily implies, living together in the same house, she has not been guilty of cohabitation in that sense.” Barksdale v. United State, 4 F. Supp. 207 (D.S.C. 1931). The New Oxford Dictionary defines cohabit as “live together and have a sexual relationship without being married.” NEW OXFORD AMERICAN DICTIONARY (3<sup>rd</sup> ed. 2010) 337.

“The wide-ranging definitions of “cohabitant” and “family or household member” in the context of domestic violence developed by various courts of appeals and trial courts in Ohio, as well as courts in other states, reflect the view that domestic violence arises out of the nature of the relationship itself, rather than the exact living circumstances of the victim and perpetrator.” State v. Williams, 79 Ohio St.3d 459, 464, 683 N.E.2d 1126, 1129 (1997). The Iowa Supreme Court held that determining whether a couple is cohabitating “is a peculiarly factual question which must be answered after examining the situation as a whole. It is appropriate for a jury to decide this.” State v. Kellogg, 542 N.W.2d 514, 518 (1996).

Appellant states that the spirit of South Carolina’s statute prohibiting domestic violence is to prevent violence between intimate couples of the same household. (Initial Brief of Appellant p. 11). The State produced testimony that Appellant and Victim were an intimate couple. Hunter testified that Appellant was her cousin and Victim was his on-again/off-again girlfriend. (Tr. 84). She further testified that they were always “getting into it”, but that Victim would always go back to him. (Tr. 86). Hunter also testified that Appellant was dating Victim and another woman at the

same time and that Appellant had been seeing both women for about a year, however Victim had been his girlfriend longer. (Tr. 101). Victim herself testified that they were on-again/off-again boyfriend and girlfriend and that they were still having a sexual relationship even though he was seeing another woman. (Tr. 144, 147). Victim also called Appellant her boyfriend in the 911 call. (Tr. 147).

There was also testimony produced that they shared a household. Hunter testified that Victim stayed at Tina's house (Floyd Street) at Floyd Street<sup>1</sup> and sometimes stays at Lisa's house (Appellant's sister). (Tr. 100). Floyd Street is the address listed on Victim's identification. (Tr. 144). Appellant's identification also lists Floyd Street. (Tr. 112, 130). Williams testified that she had known Appellant for years and knew that Floyd Street was where Appellant lived from time to time. (Tr.113). Victim testified Floyd Street was her address and that Appellant lived there too. (Tr. 144). She further testified that she and Appellant stayed the night and that they were intimate there together. (Tr. 145, 165). The trial judge recognized the cohabitation when he said: "She stayed there. Whether it was permanently or periodically, she stayed there. The defendant stayed there. Her ID indicated that she stayed there." (Tr. 182). This statement by the trial judge shows evidence to support his ruling. The State produced evidence of Victim and Appellant cohabitating. Defense counsel at trial even conceded to the fact that there was some evidence presented by stating "it's certainly a jury issue." (Tr. 184).

Therefore, the trial judge did not err in denying Appellant's directed verdict motion. This Court should affirm.

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<sup>1</sup> Floyd Street is the residence at issue.

**CONCLUSION**

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

Respectfully submitted,

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THE STATE

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**PROOF OF SERVICE**

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I, Anne Mueller, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Victor R. Seeger, counsel of record for Appellant, by sending one copy by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.  
This 26<sup>th</sup> day of April, 2021.



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**Date:** Monday, April 26, 2021 2:48:00 PM  
**Attachments:** [Davenport John - Initial Brief of Respondent and Designation of Matter \(02551210xD2C78\).PDF](#)

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Good afternoon, Mr. Seeger.

Attached to this email is the State's Initial Brief of Respondent and Designation of Matter in the above matter. This brief will be filed with the Court later today.

If you will, please confirm your receipt of this email and the attachment by return email.

Thank you for your assistance.

Sincerely,

Anne Mueller, Legal Assistant for Ambree M. Muller, Assistant Attorney General



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