THE STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO THE COURT OF APPEALS

APPEAL FROM CLARENDON COUNTY
Court of General Sessions

R. Ferrell Cothran, Jr., Circuit Court Judge

Opinion No. 5251 (S.C. Ct. App. withdrawn, substituted and refiled October 8, 2014)

Appellate Case No. ~~2012-212430~~ 2014-002741

THE STATE, ... PETITIONER,

v.

MICHAEL WILSON PEARSON,.....RESPONDENT.

BRIEF OF PETITIONER

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STATEMENT OF THE CASE

Michael Wilson Pearson (Respondent) was indicted by the grand jury of Clarendon County for attempted murder, first-degree burglary, armed robbery, grand larceny, kidnapping, and possession of a weapon during the commission of a violent crime. On May 14, 2012, Respondent proceeded to trial before a jury with his co-defendant Victor Weldon. Harry Devoe, Esquire, represented Respondent, John and Laura Knobeloch, Esquires, represented Weldon, and Solicitor Ernest A. Finney, III, and Assistant Solicitor Jason Corbett represented the State. The attempted murder charge was not submitted to the jury. The jury found Respondent guilty of all other charges, and the Honorable R. Ferrell Cothran, Jr., sentenced him to thirty years' imprisonment for first-degree burglary, thirty years' imprisonment for armed robbery, five years' imprisonment for grand larceny, twenty years' imprisonment for kidnapping, and five years' imprisonment for the weapon charge. The burglary and armed robbery sentences were consecutive and all other sentences were concurrent, for an aggregate sentence of sixty years. (App.pp.423-24.) Respondent timely filed a notice of intent to appeal his convictions and sentence and subsequently submitted a brief in support of his appeal. Petitioner (the State) filed a brief in response. On July 30, 2014, the Court of Appeals issued a published opinion in which it reversed Respondent's convictions. State v. Pearson, Op. No. 5251 (S.C. Ct. App. filed July 30, 2014) (Shearouse Adv. Sh. No. 30 at 33). The State submitted a petition for rehearing on August 12, 2014. The Court of Appeals granted the petition for rehearing on October 8, 2014, and issued State v. Pearson, Op. No. 5251 (S.C. Ct. App. withdrawn, substituted and refiled October 8, 2014) (Shearouse Adv. Sh. No. 40 at 38). The State again submitted a petition for

rehearing on this new opinion, which the Court denied on November 21, 2014. On December 22, 2014, Petitioner filed a Writ of Certiorari to the Court of Appeals, and by Order dated March 4, 2015, this Court granted the petition and directed the parties to serve and file the appendix and briefs as provided by Rule 243(j), SCACR. This Brief of Petitioner now follows.

STATEMENT OF FACTS

On May 15, 2010, Edward "Slick" Gibbons (Victim) walked out of his garage and was jumped by three men who came out of the storage room of his carport. (App.p.31, line 16; p.36, line 20-p.38, line 9.) The men beat him, robbed him, and stole his vehicle. (App.p.43, lines 23-25; p.44, lines 6-13; p.46, lines 15-21; p.47, lines 19-22; p.48, lines 10-18; p.50, lines 12-15.) Respondent and his co-defendant, Victor Weldon, were arrested and charged with attempted murder, first-degree burglary, armed robbery, grand larceny, kidnapping, and possession of a weapon during the commission of a violent crime. (App.pp.426-27.)

At trial, Victim testified he left his house around 6:15 or 6:20 a.m., came out of the garage, and bent over to put on his shoes. (App.p.30, line 18; p.37, lines 8-23.) At that point, three men came out of the storage room of his carport and jumped him. (App.p.38, lines 1-9.) The men were black and wore masks. (App.p.41, lines 5-18.) Victim testified the men robbed him of approximately $840 and then beat him, asking where the rest of the money was. (App.p.43, lines 6-25; p.48, lines 10-18.) He described how the men sat on him, kicked him, stomped on his chest and stomach, and wrapped duct tape around his face. (App.p.46, line 15-p.47, line 1.) Victim testified that one man had what he thought was a gun and he heard one man ask if they were going to shoot him. (App.p.46, lines 10-16; p.48, lines 10-11; p.60, lines 3-9.) After being beaten and robbed, he heard the men leaving and got up to see what kind of car they were driving. (App.p.50, lines 9-15.) He heard someone say, "He's up, he's up," and saw one of the men jump out of the back of Victim's El Camino and run back in to hit him. (App.p.50, lines 16-19; p.52, lines 1-3; p.54, line 25-p.55, line 5.) Victim testified the value of his El

Camino was approximately $6,500. (App.p.58, lines 18-20.) He testified he was taken to Clarendon Memorial Hospital by ambulance and then transported via helicopter to Columbia, where he spent more than a week in intensive care and then a week in a rehabilitation center. (App.p.61, lines 2-17.)

Victim's wife, Kay Gibbons, testified next. (App.p.94, line 17.) On the morning of the incident she was in bed, heard the doorbell, and opened the door to find her husband bloody, wrapped in tape, and barely able to stand. (App.p.96, lines 12-25.) She called her daughter, who called 911 and came to their house. (App.p.98, line 16-p.99, line 9.) Gibbons testified that law enforcement and an ambulance arrived at the scene and Victim was taken to the hospital. (App.p.100, line 2-p.101, line 25.)

The State called Cecil "Mac" Eaddy, Jr., to testify about finding Victim's car in the road. (App.p.115, line 19-p.117, line 24.) He found the car running with the passenger door open at about 6:40 a.m. about a mile and a half from Victim's store. (App.p.120, lines 1-9.) Eaddy described how he pulled the car out of the road and turned it off, took the keys to Victim's store, and drove one of Victim's employees back to the car so the employee could drive it to Victim's store. (App.p.120, line 15-p.121, line 24.)

Ricky Richards, an investigator with the Clarendon County Sheriff's Office, testified that he processed the vehicle after it had been found and taken to Victim's store. (App.p.125, line 23-p.127, line 5; p.128, lines 2-7.) He found fingerprints on the rear quarter of the driver's side and the driver's side door jamb and sent them to Marie Hodge, a fingerprint technician with the Sumter Police Department. (App.p.128, line 10-p.131, line 6.) Richards admitted on cross-examination that there was no way to tell when the fingerprints were left. (App.p.138, lines 6-12.)

Next the State called Investigator Thomas "Lin" Ham of the Clarendon County Sheriff's Office. (App.p.140, line 15.) He testified that he was called to the scene on May 15, 2010, and had known Victim and Gibbons all his life. (App.p.141, lines 20-25.) He testified that his assignment was to assist and oversee Investigator Kenneth Clark's investigation because Clark was a new investigator. (App.p.142, lines 9-19.) Ham identified photographs from the crime scene showing black duct tape, blood spots, and Victim at the hospital with the tape still wrapped around his head. (App.p.145, lines 2-25; p.146, lines 1-9.) He described how he wore gloves and helped the nurse get the tape off Victim's head. (App.p.146, lines 10-17.) After removing the tape, Ham testified that he put it in a bag and turned it over to Investigator Clark as evidence so it could be taken to SLED and processed. (App.p.146, lines 20-25.) Next, Ham testified to taking fingerprints from Respondent. (App.p.149, lines 12-25.) The State moved Respondent's fingerprint card into evidence and it was admitted without objection. (App.p.150, line 19-p.151, line 1.) Ham testified regarding Investigator Clark's interview with Respondent, for which Ham was present. (App.p.153, lines 19-23.) He testified that Respondent adamantly denied knowing Victim and said he did not know where Victim lived, had never been to Victim's home or place of business, and had never come into contact with Victim's vehicle. (App.p.154, lines 9-19.)

Next, the State called Marie Hodge, the fingerprint examiner for the Sumter Police Department. (App.p.162, line 11-p.163, line 19.) The trial court qualified her as an expert in the field of fingerprint identification without objection. (App.p.166, lines 21-25.) She testified that she examined the latent print send by Richards and determined it was made by Respondent's right thumb based on a comparison with Respondent's

fingerprint card. (App.p.174, line 10-p.175, line 18.) On cross-examination, Hodge admitted there was no way to age or date a fingerprint. (App.p.179, lines 14-19.)

The State called Kenneth Clark, the investigator in charge of the case. (App.p.196, line 18-p.198, line 4.) He testified Victim described the men who robbed and beat him as three black males, of mid age and medium build, who wore dark clothing and masks. (App.p.206, lines 20-25; p.208, lines 14-19.) Clark verified that a fingerprint lifted from the rear quarter panel of Victim's stolen vehicle matched Respondent. (App.p.211, line 10-p.212, line 13.) He also testified concerning his interview with Respondent, confirming Investigator Ham's earlier testimony that Respondent denied having been around Victim's property or vehicle. (App.p.213, lines 9-17.) The State then asked Clark to describe why Respondent was charged with each of the six charges he faced. (App.p.214, line 14-p.217, line 17.)

During Clark's investigation, he discovered Richard Gamble, a landscaper who verified that Respondent had previously been to Victim's house because he had taken Respondent with him to the home on several occasions to do landscaping. (App.p.224, line 22-p.225, line 7.) Although Respondent and his co-defendant Weldon claimed not to know each other, Investigator Clark testified he discovered that both men were at the South Carolina Vocational Rehabilitation Center (Voc Rehab) at the same time. (App.p.226, lines 3-25.) The State called John Hornsby to verify that Respondent and Weldon had worked together at Voc Rehab from December 9-12, 2008. (App.p.283, line 5-p.286, line 16.)

The State called Richard Gamble, the landscaper who claimed to have taken Respondent to Victim's house to do yard work. (App.p.270, line 10-p.272, line 5.)

Gamble testified that Respondent had worked with him on landscaping projects at Victim's home and next door at Victim's son's home. He estimated they spent about a week at both homes in the spring of 2010, trimming and cleaning up. He further testified that Respondent had been in Victim's garage to get tools while they were working. (App.p.272, line 3-p.274, line 1.)

After the State rested, Respondent moved for a directed verdict, arguing the only evidence was a fingerprint on the vehicle and that it could have gotten there at any time. (App.p.331, line 25-p.333, line 6.) The trial court denied the directed verdict motion, finding the fingerprint, coupled with Respondent's statement that he had never had contact with Victim's home or vehicle, was sufficient evidence to send the case to the jury. (App.p.340, lines 5-p.343, line 3.) Ultimately, the jury found Respondent guilty of first-degree burglary, armed robbery, grand larceny, kidnapping, and possession of a weapon during the commission of a violent crime, and the trial court sentenced him to a total of sixty years' imprisonment. (App.p.414, line 22-p.415, line 9; p.423, line 25-p.424, line 7.)

ARGUMENT

The Court of Appeals erred in reversing Respondent's conviction where the Court misapplied the standard for reviewing a trial court's denial of a motion for a directed verdict.

In reversing Respondent's conviction, the Court of Appeals recognized that on appeal from the denial of a directed verdict it must view the evidence in the light most favorable to the State and must find the case was properly submitted to the jury if there is any direct evidence, or substantial circumstantial evidence, which reasonably tends to prove the defendant's guilt. However, the Court of Appeals then misapplied the standard of review based in part on a misapprehension of the scope of this Court's decisions in State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000) and State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004).[1]

In its published opinion, the Court of Appeals focused on the State's "**burden of proving beyond a reasonable doubt** the identity of the defendant as the person who committed the charged crime," State v. Pearson, 410 S.C. 392, 398, 764 S.E.2d 706, 710 (Ct. App. 2014) (emphasis added) (quoting State v. Lane, 406 S.C. 118, 749 S.E.2d 165 (Ct. App. 2013) (*rev'd by* State v. Lane, 410 S.C. 505, 765 S.E.2d 557 (2014))). It then found "there was insufficient evidence tying [Respondent] to the crimes." Id. at 401, 764 S.E.2d at 711. Despite describing the substantial circumstantial evidence tending to link Respondent to the crimes, the Court of Appeals found such evidence "left the jury to speculate as to [Respondent's] guilt." Id. at 402, 764 S.E.2d at 711. Relying on Mitchell, Arnold and Bennett, the Court of Appeals held the trial court erred by denying Respondent's directed verdict motion. The State disagrees and submits the Court of

[1]The Court also based its decision on State v. Bennett, 408 S.C. 302, 758 S.E.2d 743 (Ct. App. 2014) (*cert. granted*).

Appeals' expansive reading of the above cases, and its improper focus on the burden of proof required to sustain a conviction rather than the level of evidence required to sustain a challenge at the directed verdict stage, led it to misapply the standard of review for the trial court's denial of a directed verdict.

This Court has explained that a trial court is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis. State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004). In contradiction to Cherry's holding, the Court of Appeals based its opinion on the mere possibility of an alternate hypothesis. The Court found that because "there was testimony that [Victim] regularly parked his vehicle in a public lot adjacent to his store" and Respondent "assisted with a five-day landscaping project at [Victim's] residence," Respondent "**may** have had an opportunity to come in contact with the vehicle before the crimes occurred." Pearson at 401, 764 S.E.2d at 711 (emphasis added). Regardless of whether this alternate hypothesis was reasonable or fantastical, the State's evidence did not need to exclude this alternate hypothesis in order for this case to be properly presented to the jury.

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)).

In regard to directed verdicts, the United States Supreme Court noted the following:

> [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. . . . This familiar standard gives full play to **the responsibility of the trier of fact** fairly to resolve conflicts in the testimony, **to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts**.

Jackson, 443 U.S. at 319 (emphasis added). Notably, the United Stated Supreme Court recognized that the responsibility to weigh the evidence falls exclusively to the jury, not the trial judge and not the appellate court. See Crawford v. United States, 375 F.2d 332, 334 (D.C. Cir. 1967) ("At [the directed verdict] stage of the case, the government need only introduce enough evidence to 'sustain' a conviction, i.e., such evidence that reasonable persons could find guilt beyond reasonable doubt. It is not a requirement that the evidence compel, but only that it is capable of or sufficient to persuade the jury to reach a verdict of guilt by the requisite standard.").

This Court recently articulated the following concerning the standard of review:

> 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 the guilt based upon facts or circumstances which do not amount to proof. 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.**

State v. Hepburn, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013) (quoting Cherry, 361 S.C. at 594, 606 S.E.2d at 478 (emphasis added) (citations & internal quotation marks omitted)). This is consistent with the United States Supreme Court's observation concerning circumstantial evidence:

> Admittedly, circumstantial evidence may in some cases point to a wholly incorrect result. Yet this is equally true of testimonial evidence. In both instances, **a jury is**

> **asked to weigh** the chances that the evidence correctly points to guilt against the possibility of inaccuracy or ambiguous inference. In both, the jury must use its experience with people and events in weighing the probabilities. If the jury is convinced beyond a reasonable doubt, we can require no more.

Holland v. United States, 348 U.S. 121, 137-38 (1955) (emphasis added) *cited with approval in* Jackson, 443 U.S. at 317 n.9.

The problem in the present case is that the Court of Appeals required more than what Jackson, Hepburn, and Holland require. The Court indicated Respondent may have come in contact with the vehicle because Victim parked it in a public lot adjacent to his auto parts store and Respondent assisted in a landscaping project at Victim's home. However, Respondent himself vehemently denied coming in contact with the vehicle at any time, whether during the landscaping project (which he denied entirely) or in the public lot at Victim's store. Respondent adamantly stated he had never been in contact with the vehicle and had never been to Victim's place of business. (App.p.154, lines 14-17.) The jury was not irrational to conclude the evidence established Respondent's guilt beyond a reasonable doubt. Indeed, the Court of Appeals' conclusion to the contrary amounts to a requirement that the State prove guilt to the exclusion of every other reasonable hypothesis—a requirement that is not part of the jurisprudence of this State.

In its opinion, the Court of Appeals determined there was insufficient evidence tying Respondent to the crimes. The Court recognized the most damaging evidence was Respondent's fingerprint on the rear of Victim's vehicle, where one of Victim's assailants was seen exiting the vehicle. Yet, the Court also found "there was **other evidence** showing [Respondent] may have had an opportunity to come in contact with the vehicle before the crimes occurred." State v. Pearson, 410 S.C. 392, 401, 764 S.E.2d

706, 711 (Ct. App. 2014) (emphasis added). Specifically, the Court stated there was testimony that Victim parked his car in a public lot adjacent to his auto parts store and that Respondent assisted in a landscaping project at Victim's home. However, this logic illustrates the folly of the Court's approach.

Evidence was also presented that the vehicle was parked in the lot beside the store every day Victim was working, which was six days a week. Thus, the jury could have concluded it was likely the vehicle was parked at the store over the course of the five-day landscaping project that took place at Victim's home, making it impossible for the fingerprint to have been placed during the project. Indeed, when viewed in the light most favorable to the State, this evidence eliminates either one or the other alternative hypothesis conjured by the Court for explaining the fingerprint in a way other than the reasonable explanation the jury concluded was proven beyond a reasonable doubt. The evidence presented during trial—when viewed in the proper context—was substantial circumstantial evidence and was sufficient to allow the charges to be submitted to the jury for resolution. The possibility that the jury might not have believed the State's evidence that Victim's vehicle was parked at the store every day, and may have instead believed Victim strayed from his routine and for some reason parked the vehicle at his home during the time Respondent did landscaping work, would not be enough to disregard the favorable evidence at the directed verdict stage.

This is particularly true given Respondent's own statement to Investigator Kenneth Clark. Respondent stated that he was not familiar with Victim, had never been around any of his property **or vehicle**, did not know where he lived, and had never been to his house. Therefore, the Court of Appeals' speculation, that Respondent **may** have

had an opportunity to come in contact with the vehicle before the crimes occurred simply because Victim parked his vehicle in a public lot and because Respondent assisted in landscaping work at Victim's house, is in direct contradiction to Respondent's own statement. He denied the landscaping project entirely and adamantly stated he had never been in contact with the vehicle and had never been to Victim's place of business.

The Court of Appeals also placed emphasis on the fact that the State offered no "timing evidence" to contradict reasonable explanations for the presence of the fingerprint, thus forcing the jury to have to guess whether the fingerprint was made at the time of the crimes. In State v. Rogers, 405 S.C. 554, 568, 748 S.E.2d 265, 273 (Ct. App. 2013), the Court of Appeals stated "a directed verdict is not required merely because the State cannot conclusively show the defendant was at the crime scene at the relevant time." The Court cited the Supreme Court's finding in State v. Frazier, 386 S.C. 526, 532, 689 S.E.2d 610, 613 (2010), that "the holdings in Arnold, Martin, and Schrock did not alter or increase 'the sufficiency of evidence standard a trial court is to apply in a case based on circumstantial evidence.'" Id. "The [Frazier] court explained this is because those holdings were based on the State's failure to present *any* evidence placing the defendant at the scene, not the State's inability to provide conclusive proof on that point." Id. at 568-69, 748 S.E.2d at 273. While the State did not conclusively prove Respondent's fingerprint placed him at the scene of the crimes at the time the crimes were committed, it did conclusively prove he touched the vehicle by introducing fingerprint evidence matching him to the print found on the rear quarter of the vehicle. Combined with Victim's testimony that one assailant rode in the back of the El Camino where the fingerprint was found, and Respondent's own statement that he had never

come in contact with the vehicle, this was certainly not a failure to present *any* evidence as in the above cases. Thus, sufficient evidence existed to submit the case to the jury.

It is apparent the Court of Appeals engaged in speculation and weighed the evidence of the fingerprint, rather than simply considering its existence, to determine whether it reached the level of substantial circumstantial evidence. The Court emphasized the existence of other "reasonable explanations for the presence of the fingerprint," thus concluding the jury could only guess whether the fingerprint was made at the time of the crimes. This conflates the standard of review for directed verdict with the standard jury charges for direct and circumstantial evidence.

Over fifty years ago, in State v. Littlejohn, 228 S.C. 324, 328, 89 S.E.2d 924, 926 (1955), this Court addressed the distinction between a trial judge's consideration of circumstantial evidence at the directed verdict stage of a trial and a jury's consideration of circumstantial evidence during deliberations. By comparison, regarding the **jury's** consideration of circumstantial evidence, this Court instructed:

> [I]t is necessary that every circumstance relied upon by the state be proven beyond a reasonable doubt; and that all of the circumstances so proven be consistent with each other and, taken together, point conclusively to the guilt of the accused **to the exclusion of every other reasonable hypothesis**. It is not sufficient that they create a probability, though a strong one; and if, assuming them to be true, they may be accounted for upon any reasonable hypothesis which does not include the guilt of the accused, the proof has failed.

Id. (emphasis added). Regarding the **trial judge's** consideration of circumstantial evidence at the directed verdict stage, this Court explained:

> But on a motion for direction of verdict, the trial judge is concerned with the existence or non-existence of evidence, not with its weight; and, although he should not refuse to grant the motion where the evidence merely raises a

> suspicion that the accused is guilty, it is **his duty to submit the case to the jury** if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.

Id. at 329, 89 S.E.2d at 926 (emphasis added).

As explained by this Court: "It must be remembered . . . that there is one test by which circumstantial evidence is to be measured by the jury in its deliberations, and quite another by which it is to be measured by the trial judge in his consideration of the accused's motion for a directed verdict." Littlejohn, 228 S.C. at 328, 89 S.E.2d at 926. Indeed, the more stringent test by which circumstantial evidence is to be measured by the jury is illustrated by the modified circumstantial evidence charge recently approved by this Court, which provides:

> There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.
>
> Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence, however, **to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed.**
>
> The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.

State v. Logan, 405 S.C. 83, 99, 747 S.E.2d 444, 452 (2013) (emphasis added). A similarly stringent standard, and one nearly identical to South Carolina's previously

abandoned circumstantial evidence requirement that "all of the circumstances so proven be consistent with each other and, taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis,"[2] is set forth by statute in our sister state of Georgia.[3] Yet, even under this strict test by which the jury must measure circumstantial evidence, the Georgia Court of Appeals has held it is not necessary that circumstantial evidence exclude every other hypothesis except that of guilt but, rather, only reasonable inferences and hypotheses, and **it is for the jury to decide whether all reasonable hypotheses have been excluded**. Wooten v. State, 507 S.E.2d 202, 203 (Ga. Ct. App. 1998). It further explained:

> **Questions as to the reasonableness of hypotheses are generally to be decided by the jury which heard the evidence and saw the witnesses**, so where the jury is authorized to find that the evidence, although circumstantial, was sufficient to exclude every reasonable hypothesis save that of guilt, that finding will not be disturbed on appeal unless the verdict of guilty is insupportable as a matter of law.

Ross v. State, 524 S.E.2d 255, 256 (Ga. Ct. App. 1999) (emphasis added) (citation omitted).

By comparison, when an appellate court is reviewing the denial of a directed verdict motion in a case solely involving circumstantial evidence, this Court has instructed:

> When the state relies exclusively on circumstantial evidence and a motion for a directed verdict is made, the circuit court is concerned with the existence or

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[2] Littlejohn, 228 S.C. at 328, 89 S.E.2d at 926.

[3] "To warrant a conviction on circumstantial evidence, the proved facts shall not only be consistent with the hypothesis of guilt, but shall exclude every other reasonable hypothesis save that of the guilt of the accused." Ga. Code Ann. § 24-14-6 (2013).

> nonexistence of evidence, not with its weight. 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 circumstances which do not amount to proof. However, **a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis**.

State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004) (emphasis added) (citations omitted). Accordingly, an analysis of the trial judge's ruling hinges on whether all of the circumstantial evidence taken together was sufficient for the jury to reasonably infer the defendant's guilt for the crimes beyond a reasonable doubt. Id. at 595, 606 S.E.2d at 478. Critically, 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. State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002). Indeed, "unless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986).

Here, the Court of Appeals seems both (1) to have applied the wrong, more stringent, test identified by Littlejohn to Respondent's case and (2) to have substituted its own judgment in place of the jury to conclude that because some other hypothesis could possibly explain the circumstantial evidence tending to prove Respondent's identity as the perpetrator, a directed verdict should have been granted. The State submits this constituted a misapplication of the standard of review in both instances. The appellate court should not weigh the substantial circumstantial evidence reasonably tending to prove the perpetrator's identity to determine if it actually proved Respondent was one of the perpetrators beyond a reasonable doubt to the exclusion of every other reasonable

hypothesis. Weighing circumstantial evidence should be conducted by the jury which heard that evidence and saw the witnesses, not by the appellate court. The Court of Appeals supports its analysis with a reference to Mitchell and Arnold; however, both cases, as well as the seminal South Carolina cases upon which they are based, are distinguishable, particularly in regard to the proof of identity the Court of Appeals found lacking against Respondent. Notably, the other case the Court analyzed in its decision is State v. Bennett, 408 S.C. 302, 758 S.E.2d 743 (Ct. App. 2014), in which this Court recently granted certiorari. Additionally, State v. Lane, 410 S.C. 505, 765 S.E.2d 557 (2014), which the Court cited numerous times, has recently been reversed by this Court, where this Court found the Court of Appeals erred in determining the State did not present substantial circumstantial evidence to prove Lane committed the crime.

A comparison of the circumstantial evidence in Mitchell, Arnold, and their predecessors, against the circumstantial evidence presented against Respondent, supports the trial judge's finding that:

> I understand that the jury is going to have to make this determination as to whether they think the State has met its burden of proof. But at this point it's the existence of evidence and I think there is at least credible evidence in this record that the jury could make a finding of guilt.
>
> It's a number of facts they've got to struggle with. But I'm going to let them make that call. I'm sure both sides will argue what the evidence does or does not show. But at least at this point I think it goes further than the Mitchell, Arnold, or Bostic case. . . . And your client's fingerprint was found on the stolen vehicle within 30 minutes of the crimes. They can at least—they can decide if the State has not proved that he was there at the time of the crime or not; I don't know. There is at least evidence of that.

(App.p.342, line 9-p.343, line 2).

In its opinion, the Court of Appeals reviewed Mitchell and Arnold, labeling them as "instructive in determining whether the circumstantial evidence presented by the State met the 'substantial circumstantial evidence' standard." State v. Pearson, 410 S.C. 392, 399, 764 S.E.2d 706, 710 (Ct. App. 2014). In its review of Mitchell, the Court of Appeals noted this Court found "the fingerprint evidence was insufficient to prove Mitchell's guilt **because there was testimony Mitchell had been in and around the victim's house at least three times before the burglary**." Id. (citing Mitchell, 341 S.C. at 409, 535 S.E.2d at 127 (emphasis added)).

In State v. Arnold, 361 S.C. 386, 390, 605 S.E.2d 529, 531 (2004), this Court found:

> Viewing the evidence most favorably to the State, respondent's fingerprint on the coffee cup lid tab establishes he was in the borrowed BMW on the same day the victim was last seen alive. The fact that the BMW was found abandoned in Tennessee, the same state where respondent was located after his stay in Savannah, raises a suspicion of guilt but is not evidence that respondent killed Dr. Cox. Further, there is no evidence respondent was at the scene of the crime, which according to the State's theory was in Colleton County.

Arnold was a murder case where the crime occurred in Colleton County but the car was found in Tennessee, and **police determined the car was not connected to the murder scene**. There was not enough of a connection between finding the defendant's fingerprint in the victim's car and charging him with murder **because the car was not the scene of the crime** and did not appear to be involved in the actual murder.

In its analysis of Bennett, in which this Court has recently granted certiorari, the Court of Appeals pointed out, "It was undisputed that Bennett was a frequent visitor to the center before the crime and spent much of his time in the computer room." Pearson,

410 S.C. at 400, 764 S.E.2d at 710 (citing Bennett, 408 S.C. at 307, 758 S.E.2d at 745). It also noted, "The [trial] court reasoned the exact locations of the DNA and fingerprint evidence 'd[id] not rise above suspicion' because it was not 'unexpected' to find Bennett's DNA and fingerprints in a communal area he frequented before the crime." Id. at 400, 764 S.E.2d at 711 (citing Bennett, 408 S.C. at 307, 758 S.E.2d at 746).

In both Mitchell and Bennett, the reason the directed verdict was or should have been granted was because the defendant was known to have been in the place where the fingerprints were found. Here, there is absolutely no evidence Respondent ever lawfully touched the vehicle where his fingerprint was found.[4] To the contrary, Respondent adamantly denied ever having been near the vehicle, the victim, the victim's store, or the victim's home. Even though testimony showed Respondent worked on a landscaping project at the victim's home, no testimony was presented that the victim's car was at his home during the five-day landscaping project, thus giving Respondent access to the vehicle. On the other hand, testimony was presented by the victim himself that he worked at his store six days a week and that the El Camino is the car he drives. In other words, the Court of Appeals' decision here was based on pure speculation rather than a reasonable inference flowing from the evidence, as was the case in Mitchell, Arnold, and Bennett.

[4] Counsel made claims during his directed verdict argument that: "My client lived a block and a half from the store. My client walks the neighborhood and recently put the fingerprint on the—at that store and no other place." The Court of Appeals appeared to rely on counsel's argument as evidence in its original opinion, State v. Pearson, Op. No. 5251 (S.C. Ct. App. filed July 30, 2014) (Shearouse Adv. Sh. No. 30 at 33), when it found "there was other evidence showing [Respondent] may have had an opportunity to come in contact with the vehicle before the crimes occurred. For instance, [Respondent] lived only a block away from [Victim's] store . . . ." However, no such evidence existed.

The evidence viewed in a light most favorable to the State in regard to the identity of Respondent as one of the perpetrators consisted of (1) Respondent's fingerprint found on the stolen vehicle within thirty minutes of the crime approximately one and a half to two miles from the scene of the crime; (2) Respondent's denial that he had ever had contact with the vehicle; (3) Victim's testimony that one assailant rode in the back of the El Camino where the fingerprint was found; and (4) testimony that the codefendants were in the same vocational rehabilitation training program and assigned to the same wood shop for approximately one week.

Thus, viewing all of the evidence presented in a light most favorable to the State as required, and considering only its existence and not its weight, the evidence reasonably tended to prove Respondent's guilt and required the trial judge to submit the case to the jury. Based on the logical and reasonable inferences to be drawn from this evidence, the jury could identify Respondent as one of the perpetrators and could convict him of each element of the crimes charged. Furthermore, the questions as to whether the evidence presented supported an inference of guilt and what weight should be assigned to that evidence rested solely with the jury as the fact-finders. Therefore, the trial judge properly submitted the case to the jury to allow it to resolve any of the factual disputes raised by the evidence and the inferences to be drawn from it. As the trial judge pointed out:

> But part of the testimony before this jury is has you[r] client ever had contact with that car. And he—believed that he never had contact with the car so that fingerprint could have gotten there some—lawfully. . . . And there was no testimony that the car was there at that time or that in fact he touched the car or had anything to do with the car. But that's a question of fact this jury is going to have to decide.
>
> . . .

> There was no testimony from—**he was working at his house so therefore there's no testimony his print could have accident[al]ly gotten on that car**. Now those are all questions of fact this jury is going to have to struggle with. But at this point in the game whether the evidence exists that they could make this determination and in fact circumstances that []his prints are on the car within 30 minutes of the crime being occurred [sic] is at least sufficient to have placed him at the scene.

(App.p.340, line 23-p.341, line 7; p.341, line 24-p.342, line 8.) (emphasis added.)

The State respectfully submits the Court of Appeals misapprehended Mitchell and Arnold and misapplied the standard of review by improperly focusing on the weight of the evidence as opposed to its existence.[5] Indeed, the panel that heard the oral argument at the Court of Appeals stated:

> Your argument that we can't weigh evidence is consistent with the words of all the cases that our Supreme Court has given us and that we have said ourselves, but it's actually inconsistent with the law because the simple existence of that fingerprint is not enough. We have to decide—the three of us—just like the trial judge had to decide whether or not the weight of that is enough that it is called substantial. When the evidence is purely circumstantial as it is here, we must determine whether the weight of it is substantial or maybe just take the word weight out of the sentence. We must determine whether the evidence is substantial.

(Oral argument at Court of Appeals, Courtroom I, 10:00 a.m., June 17, 2014.)

"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." State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002). Rather than following the jurisprudence of

[5]The State also submits the Court of Appeals' reliance on Bennett and Lane was premature because certiorari was pending on both at the time the opinion was published. Lane was subsequently reversed and this Court has granted certiorari in Bennett.

South Carolina and applying the correct standard of review in cases regarding the denial of a directed verdict, the Court of Appeals reevaluated the trial court's decision regarding whether the weight of the evidence was enough to be called substantial. The Court of Appeals mistakenly reversed the trial court's ruling even though evidence existed to support it. Respondent's case did not present a complete failure of evidence of his guilt. Instead, substantial circumstantial evidence of Respondent's guilt for the crimes charged was presented. Therefore, the trial judge properly denied Respondent's directed verdict motion, and Respondent's conviction should have been affirmed by the Court of Appeals. This Court should reverse the decision of the Court of Appeals and affirm the trial court's determination that evidence existed sufficient to warrant sending the case to the jury.

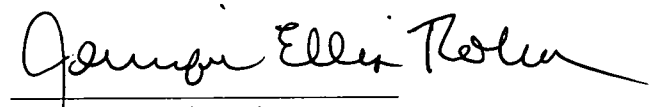
CONCLUSION

For all of the foregoing reasons, Petitioner respectfully requests that this Court issue an order reversing the decision of the Court of Appeals, affirming the circuit court, and affirming Respondent's conviction and sentence.

Respectfully submitted,

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

BY: 
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ATTORNEYS FOR PETITIONER

Columbia, South Carolina
April 1, 2015

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM CLARENDON COUNTY
Court of General Sessions

R. Ferrell Cothran, Jr., Circuit Court Judge

Opinion No. 5251 (S.C. Ct. App. withdrawn, substituted and refiled October 8, 2014)

Appellate Case No. 2012-212430

THE STATE, ... PETITIONER,

v.

MICHAEL WILSON PEARSON,.....RESPONDENT.

PROOF OF SERVICE

I, Angela Bennett, Legal Assistant, hereby certify that I have served the within *Brief of Petitioner* dated December 18, 2014, on Respondent by depositing two copies of the brief in the United States mail, postage prepaid, addressed to his attorney of record:

Kathrine H. Hudgins, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 1st day of April, 2015.

Angela Bennett
Legal Assistant

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ALAN WILSON
ATTORNEY GENERAL

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S.C. Supreme Court

April 1, 2015

Kathrine H. Hudgins, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

RE: State v. Michael Wilson Pearson
Appellate Case No. ~~2012-212430~~ 2014-002741

Dear Ms. Hudgins,

I am enclosing two (2) copies of the Brief of Petitioner in the above-referenced case.

Sincerely,

Jennifer Ellis Roberts
Assistant Attorney General
S.C. Bar No. 79818

JER/ab
Enclosures

cc: Honorable Daniel E. Shearouse
(original and fourteen copies of Brief enclosed)
(13 copies of the Appendix is enclosed)
Victim Services