The Supreme Court of South Carolina

In the Matter of Edmund Heyward Robinson, Petitioner

Appellate Case No. 2013-000316

ORDER

By order dated February 22, 2013, the Court accepted the resignation from petitioner as a member of the South Carolina Bar. The order is vacated and petitioner is reinstated as a Retired Member of the South Carolina Bar.

s/ Jean H. Toal C.J.

s/ Costa M. Pleicones J.

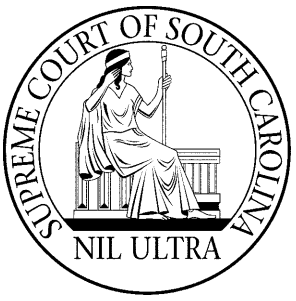
s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

Columbia, South Carolina

March 5, 2013



OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 12
March 13, 2013
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

CONTENTS

THE SUPREME COURT OF SOUTH CAROLINA

PUBLISHED OPINIONS AND ORDERS

UNPUBLISHED OPINIONS AND ORDERS

PETITIONS – UNITED STATES SUPREME COURT

PETITIONS FOR REHEARING

The South Carolina Court of Appeals

PUBLISHED OPINIONS

UNPUBLISHED OPINIONS

2013-UP-109-Anderson Brothers Bank v. EBT Property Holding Co. Inc. et al.
(Georgetown, Judge Joe M. Crosby)

2013-UP-110-State v. Demetrius Goodwin
(Richland, Judge W. Jeffrey Young)

2013-UP-111-Field House Properties v. S.C. Department of Revenue
(Administrative Law Court Judge Shirley Robinson)

2013-UP-112-State v. Mark Elliott
(Horry, Judge Larry B. Hyman, Jr.)

PETITIONS FOR REHEARING

5016-SC Public Interest Foundation v. Greenville County	Pending
5042-State v. Ricky Cheeks	Pending
5062-Duke Energy Carolina v. SCDHEC	Pending
5070-Lincoln General v. Progressive Northern	Pending
5074-J. Kevin Baugh, M.D. v. Columbia Heart Clinic	Pending
5078-In re: Estate of Atn Burns Livingston	Pending
5082-Thomas Lee Brown v. Peoplease Corporation et al.	Pending
5084-State v. Kendrick Taylor	Pending
5087-W. Simmons v. SC Strong	Pending
5088-Charlotte Williams v. David Stafford Drywall et al.	Pending
5090-Independence National Bank v. Buncombe Professional Park	Pending
5092-Mark Vail v. State	Pending
2012-UP-399-Bowen v. S.C. Department of Motor Vehicles	Pending
2012-UP-520-Johnson v. Mew	Pending
2012-UP-526-State v. Christopher Ryan Whitehead	Pending

2012-UP-609-Coghlan v. Coghlan	Pending
2012-UP-614 - Charles Griggs v. Ashleytowne Development	Pending
2012-UP-623-L. Paul Trask v. S.C. Department of Public Safety et al.	Pending
2012-UP-626-Maurice Morant v. SCDC	Pending
2012-UP-632-State v. Stevie Lamont Aiken	Pending
2012-UP-670-Burgess v. Burgess	Pending
2012-UP-674-SCDSS v. Devin B, Brian G., and Sue G.	Pending
2012-UP-676-G. Gottschlich v. D. McNeil	Pending
2012-UP-678-State v. Darrin D. Holston	Pending
2012-UP-688-L. Brown v. Dick Smith Nissan	Pending
2013-UP-001-R. Coleman v. State	Pending
2013-UP-010-N. Mitchell v. Juan P. Marruffo et al.	Pending
2013-UP-014-D. Keller v. ING Financial Partners et al.	Pending
2013-UP-034-Clark D. Thomas v. Bolus & Bolus	Pending
2013-UP-056-William Lippincott v. S.C. Dept. of Employment	Pending
2013-UP-057-Progressive Home Builders v. Grace Hucks	Pending
2013-UP-058-State v. Bobby J. Barton	Pending
2013-UP-061-State v. Christopher M. Stephens	Pending
2012-UP-066-Carpenter v. Measter	Pending
2013-UP-070-Loretta Springs v. Clemson University	Pending
2013-UP-072-Thomas Dewey Wise v. SCDHEC	Pending

2013-UP-078-Leon P. Butler, Jr. v. Williams L. Wilson Pending

2013-UP-081-LeClair v. Palmetto Health Pending

2013-UP-082-Roosevelt Simmons v. Hattie Bailum et al. Pending

2013-UP-084-Denise S. Bowen v. State Farm Pending

2013-UP-085-Brenda Peterson v. Hughie Peterson Pending

PETITIONS-SOUTH CAROLINA SUPREME COURT

4670-SCDC v. B. Cartrette Pending

4750-Cullen v. McNeal Pending

4764-Walterboro Hospital v. Meacher Pending

4779-AJG Holdings v. Dunn Pending

4819-Columbia/CSA v. SC Medical Pending

4832-Crystal Pines v. Phillips Pending

4833-State v. L. Phillips Pending

4839-Raquel Martinez v. Spartanburg County, Employer, et al. Granted 02/07/13

4851-Davis v. KB Home of S.C. Pending

4859-State v. B. Garris Pending

4862-5 Star v. Ford Motor Company Pending

4863-White Oak v. Lexington Insurance Pending

4865-Shatto v. McLeod Regional Medical Pending

4867-State v. Jonathan Hill Pending

4872-State v. Kenneth Morris Pending

4873-MRI at Belfair v. SCDHEC Denied 03/06/13

4879-Stephen Wise v. Richard Wise	Pending
4880-Gordon v. Busbee	Pending
4887-Rebecca West v. Todd Morehead	Granted 03/05/13
4888-Pope v. Heritage Communities	Pending
4890-Potter v. Spartanburg School	Pending
4892-Katie Green Buist v. Michael Scott Buist	Pending
4894-State v. Andre Jackson	Denied 03/06/13
4895-King v. International Knife	Pending
4898-Purser v. Owens	Pending
4902-Kimmer v. Wright	Pending
4905-Landry v. Carolinas Healthcare	Pending
4907-Newton v. Zoning Board	Pending
4909-North American Rescue v. Richardson	Pending
4914-Stevens v. Aughtry (City of Columbia) Stevens (Gary v. City of Columbia)	Pending
4918-Patricia Lewin v. Albert Lewin	Denied 03/06/13
4921-Roof v. Steele	Denied 03/06/13
4923-Price v. Peachtree Electrical	Pending
4924-State v. Bradley Senter	Pending
4926-Dinkins v. Lowe's Home Centers	Pending
4927-State v. John Porter Johnson	Denied 03/06/13
4932-Margie Black v. Lexington County Bd. Of Zoning	Pending

4933-Fettler v. Genter	Pending	
4934-State v. Rodney Galimore	Pending	
4936-Mullarkey v. Mullarkey	Pending	
4940-York Cty. and Nazareth Church v. SCHEC et al	Pending	
4941-State v. Bentley Collins	Pending	
4046-Joseph Walker v. State	Granted	03/05/13
4947-Ferguson Fire and Fabrication v. Preferred Fire Protection	Pending	
4949-Robert Crossland v. Shirley Crossland	Pending	
4953-Carmax Auto Superstores v. S.C. Dep't of Revenue	Pending	
4954-North Point Dev. Group v. SCDOT	Pending	
4956-State v. Diamon D. Fripp	Pending	
4960-Justin O'Toole Lucey et al. v. Amy Meyer	Pending	
4964-State v. Alfred Adams	Pending	
4973-Byrd v. Livingston	Pending	
4975-Greeneagle Inc. v. SCDHEC	Pending	
4979-Major v. City of Hartsville	Pending	
4983-State v. James Ervin Ramsey	Pending	
4989-Dennis N. Lambries v. Saluda County Council et al.	Pending	
4992-Gregory Ford v. Beaufort County Assessor	Pending	
4995-Keeter v. Alpine Towers International and Sexton	Pending	
4997-Allegro v. Emmett J. Scully	Pending	

5001-State v. Alonzo Craig Hawes	Pending
5003-Earl Phillips as personal representative v. Brigitte Quick	Pending
5006-J. Broach and M. Loomis v. E. Carter et al.	Pending
5010-S.C. Dep't of Transportation v. Janell P. Revels et al.	Pending
5011-SCDHEC v. Ann Dreher	Pending
5013-Geneva Watson v. Xtra Mile Driver Training	Pending
5017-State v. Christopher Manning	Pending
5019-John Christopher Johnson v. Reginald C. Lloyd et al.	Pending
5020-Ricky Rhame v. Charleston Cty. School District	Pending
5022-Gregory Collins v. Seko Charlotte and Nationwide Mutual	Pending
5025-State v. Randy Vickery	Pending
5031-State v. Demetrius Price	Pending
5032-LeAndra Lewis v. L.B. Dynasty	Pending
5033-State v. Derrick McDonald	Pending
5034-State v. Richard Bill Niles, Jr.	Pending
5035-David R. Martin and Patricia F. Martin v. Ann P. Bay et al.	Pending
5041-Carolina First Bank v. BADD	Pending
5044-State v. Gene Howard Vinson	Pending
5052-State v. Michael Donahue	Pending
5059-Kellie N. Burnette v. City of Greenville et al.	Pending
2010-UP-356-State v. Darian K. Robinson	Pending

2011-UP-038-Dunson v, Alex Lee, Inc.	Pending
2011-UP-052-Williamson v. Orangeburg	Pending
2011-UP-084-Greenwood Beach v. Charleston	Pending
2011-UP-108-Dippel v. Horry County	Pending
2011-UP-109-Dippel v. Fowler	Pending
2011-UP-127-State v. Beulah Butler	Pending
2011-UP-199-Amy Davidson v. City of Beaufort	Pending
2011-UP-328-Davison v. Scaffe	Pending
2011-UP-343-State v. Eric Dantzler	Pending
2011-UP-359-Price v. Investors Title Ins.	Pending
2011-UP-363-State v. Lloyd Wright	Pending
2011-UP-371-Shealy v. The Paul E. Shelton Rev. Trust	Pending
2011-UP-380-EAGLE v. SCDHEC and MRR	Granted 03/07/13
2011-UP-385-State v. Anthony Wilder	Pending
2011-UP-400-McKinnedy v. SCDC	Pending
2011-UP-447-Brad Johnson v. Lewis Hall	Pending
2011-UP-456-Thomas Heaton v. State	Pending
2011-UP-468-Patricia Johnson v. BMW Manuf.	Pending
2011-UP-471-State v. Terrell McCoy	Denied 03/06/13
2011-UP-475-State v. James Austin	Pending

2011-UP-495-State v. Arthur Rivers	Pending
2011-UP-496-State v. Coaxum	Pending
2011-UP-502-Heath Hill v. SCDHEC and SCE&G	Pending
2011-UP-516-Vaughn Smith v. SCDPPPS	Pending
2011-UP-517-N. M. McLean et al. v. James B. Drennan, III	Pending
2011-UP-519-Stevens & Wilkinson v. City of Columbia	Pending
2011-UP-522-State v. Michael D. Jackson	Pending
2011-UP-550-McCaskill v. Roth	Denied 03/06/13
2011-UP-558-State v. Tawanda Williams	Pending
2011-UP-562-State v. Tarus Henry	Pending
2011-UP-572-State v. Reico Welch	Pending
2011-UP-581-On Time Transp. v. SCWC Unins. Emp. Fund	Denied 03/06/13
2011-UP-583-State v. David Lee Coward	Pending
2011-UP-587-Trinity Inv. v. Marina Ventures	Pending
2011-UP-588-State v. Lorenzo R. Nicholson	Pending
2011-UP-590-A. Leon Ravenell v. Nancy Meyer	Pending
2012-UP-010-State v. Norman Mitchell	Pending
2012-UP-014-State v. Andre Norris	Pending
2012-UP-018-State v. Robert Phipps	Pending
2012-UP-030-Babaee v. Moisture Warranty Corp.	Pending
2012-UP-037-Livingston v. Danube Valley	Pending

2012-UP-058-State v. Andra Byron Jamison	Pending
2012-UP-060-Austin v. Stone	Pending
2012-UP-081-Hueble v. Vaughn	Pending
2012-UP-089-State v. A. Williamson	Pending
2012-UP-091-State v. Mike Salley	Pending
2012-UP-152-State v. Kevin Shane Epting	Pending
2012-UP-153-McCall v. Sandvik, Inc.	Pending
2012-UP-203-State v. Dominic Leggette	Pending
2012-UP-217-Forest Beach Owners' Assoc. v. C. Bair	Pending
2012-UP-218-State v. Adrian Eaglin	Pending
2012-UP-219-Dale Hill et al. v. Deertrack Golf and Country Club	Pending
2012-UP-267-State v. James Craig White	Pending
2012-UP-270-National Grange Ins. Co. v. Phoenix Contract Glass, LLC, et al.	Pending
2012-UP-274-Passaloukas v. Bensch	Pending
2012-UP-276-Regions Bank v. Stonebridge Development et al.	Pending
2012-UP-278-State v. Hazard Cameron	Pending
2012-UP-285-State v. Jacob M. Breda	Pending
2012-UP-286-Diane K. Rainwater v. Fred A. Rainwater	Pending
2012-UP-290-State v. Eddie Simmons	Pending
2012-UP-292-Demetrius Ladson v. Harvest Hope	Pending
2012-UP-293-Clegg v. Lambrecht	Pending

2012-UP-302-Maple v. Heritage Healthcare	Pending
2012-UP-312-State v. Edward Twyman	Pending
2012-UP-314-Grand Bees Development v. SCDHEC et al.	Pending
2012-UP-321-James Tinsley v. State	Pending
2012-UP-330-State v. Doyle Marion Garrett	Pending
2012-UP-348-State v. Jack Harrison, Jr.	Pending
2012-UP-351-State v. Kevin J. Gilliard	Pending
2012-UP-365-Patricia E. King and Robbie King Jones, as representatives of W.R. King and Ellen King v. Margie B. King and Robbie Ione King, individually and as co-representatives of the estate of Christopher G. King et al.	Pending
2012-UP-371-State v. Thomas Smart	Pending
2012-UP-404-McDonnell and Assoc v. First Citizens Bank	Pending
2012-UP-432-State v. Bryant Kinloch	Pending
2012-UP-433-Jeffrey D. Allen v. S.C. Budget and Control Bd. Employee Insurance Plan et al.	Pending
2012-UP-460-Figueroa v. CBI/Columbia Place Mall et al.	Pending
2012-UP-462-J. Tennant v. Board of Zoning Appeals	Pending
2012-UP-471-SCDSS v. Kelcie C. et al.	Pending
2012-UP-502-Hurst v. Board of Dentistry	Pending
2012-UP-504-Palmetto Bank v. Cardwell	Pending
2012-UP-552-Virginia A. Miles v. Waffle House	Pending
2012-UP-559-NAFH National Bank v. Israel Romero	Pending

2012-UP-561-State v. Joseph Lathan Kelly	Pending
2012-UP-569-Vennie Taylor Hudson v. Caregivers of SC	Pending
2012-UP-577-State v. Marcus Addison	Pending
2012-UP-579-Andrea Beth Campbell v. Ronnie A. Brockway	Pending
2012-UP-585-State v. Rushan Counts	Pending
2012-UP-600-Karen Irby v. Augusta Lawson	Pending
2012-UP-603-Fidelity Bank v. Cox Investment Group et al.	Pending
2012-UP-608-SunTrust Mortgage v. Ostendorff	Pending
2012-UP-616-State v. Jamel Dwayne Good	Pending
2012-UP-658-Palmetto Citizens v. Butch Johnson	Pending

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Respondent,

v.

Lawrence Brown, Appellant.

Appellate Case No. 2011-193606

Appeal From Williamsburg County
DeAndrea G. Benjamin, Circuit Court Judge

Opinion No. 27231
Heard January 9, 2013 – Filed March 13, 2013

AFFIRMED

Deputy Chief Appellate Defender Wanda H. Carter of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy Attorney General John W. McIntosh, Senior Assistant Deputy Attorney General Salley W. Elliott, and Assistant Attorney General Mark Reynolds Farthing, all of Columbia, and Solicitor Ernest Adolphus Finney, III of Sumter, for Respondent.

CHIEF JUSTICE TOAL: Lawrence Brown (Appellant) challenges his conviction for grand larceny of two motor vehicles in violation of section 16-13-30 of the South Carolina Code. We affirm.

FACTUAL/PROCEDURAL HISTORY

In April 2010, Appellant contacted Don's Car Crushing (Don's), a business that crushes cars for scrap metal, and indicated that he owned several vehicles he wanted to sell. A tow truck operator for Don's, Dakota Cooper (Cooper) contacted Appellant to arrange a meeting. Appellant told Cooper where to meet him in Salters, South Carolina. Cooper testified that the location where he met Appellant appeared to be a salvage yard. Appellant explained to Cooper that his father had recently died and that Appellant had to take care of the property, including removal of up to seventy-five vehicles stored on the property. Appellant and Cooper negotiated for the sale of four vehicles. Appellant and Cooper executed a Bill of Sale for the four vehicles, but Cooper only took possession of two vehicles: a 1989 Chevrolet Corsica and a 1987 Ford Taurus. Cooper agreed to return the following day to retrieve the remaining two vehicles covered under the original Bill of Sale, and possibly purchase other vehicles on the property for approximately $2,400.

Later that day, Lawrence Williams (Lawrence) came to the location where Cooper and Appellant made their transaction. Lawrence's uncle, Robert Williams (Robert), owned the property. Lawrence noticed the Ford Taurus, which he owned, and the Chevrolet Corsica, which belonged to Robert, were missing. Lawrence called Robert and asked whether he moved the vehicles. When Robert replied that he did not, Lawrence notified police and reported the vehicles stolen.

Cooper returned the next day but could not locate Appellant. Cooper telephoned Appellant, and Appellant stated he would arrive in thirty minutes. However, after forty minutes and another telephone call, Appellant did not arrive. Cooper then approached the house on the property, and Lawrence met him at the front door. Cooper informed Lawrence that he was there to retrieve the remaining cars he agreed to purchase from Appellant. Lawrence refused, and notified police, who interviewed Cooper and obtained Appellant's name and driver's license number. Police arrested Appellant and charged him with grand larceny for the theft of the two vehicles. Meanwhile, Don's had already crushed both vehicles; thus, neither could be returned or recovered.

On May 5, 2011, the Williamsburg County Grand Jury indicted Appellant for two counts of grand larceny. Appellant did not appear at trial, and the trial

proceeded in his absence. At the close of the State's case, Appellant's trial counsel moved for a directed verdict. According to Appellant's trial counsel, the State failed to prove that the value of either vehicle exceeded $1,000. The trial court denied Appellant's motion. The trial court then charged the jury on the elements of grand larceny, including the State's burden of proving that the value of the stolen property exceeded $1,000. Appellant's trial counsel did not object to the trial court's instruction.

On May 12, 2011, the jury found Appellant guilty and the trial court sentenced Appellant to five years' imprisonment on one of the grand larceny convictions, and a consecutive sentence of three years' imprisonment for the other conviction.

Appellant appealed his convictions, and this Court certified the case for review pursuant to Rule 204(b), SCACR.

ISSUES PRESENTED

I. Whether the amendment to section 16-13-30 of the South Carolina Code should be applied retroactively to Appellant's case.

II. Whether the trial court erred in denying Appellant's motion for a directed verdict.

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). This Court is bound by the trial court's factual findings unless they are clearly erroneous. *State v. Quattlebaum*, 338 S.C. 441, 452, 527 S.E.2d 105, 111 (2000). On appeal from the denial of a directed verdict, this Court must view the evidence in the light most favorable to the State. *State v. Lollis*, 343 S.C. 580, 583, 541 S.E.2d 254, 256 (2001). The defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. *State v. McHoney*, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001). However, if there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury. *State v. Pinckney*, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000). A circuit judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty. *State v. Schrock*, 283 S.C. 129, 132, 322 S.E.2d 450, 451–52 (1984).

DISCUSSION

I. Retroactive Application of Amendment to Section 16-13-30 of the South Carolina Code

Appellant argues that the amendment to section 16-13-30 of the South Carolina Code should be applied retroactively to the instant case.[1] We disagree.

In the instant case, the trial court instructed the jury on the elements of grand larceny as section 16-13-30 provided at the time Appellant committed the offense, and not the elements of section 16-13-30 as amended at the time of his indictment or conviction. However, Appellant's trial counsel stated explicitly that he had no objection to the trial court's instruction. Thus, Appellant's argument that the trial court erred in failing to apply section 16-13-30 as amended is unpreserved.[2] However, we analyze Appellant's argument for the education of the bench and bar.

Appellant committed the grand larceny in April 2010. At the time, section 16-13-30 provided, in pertinent part:

> (B) Larceny of goods, chattels, instruments, or other personalty valued in excess of *one thousand dollars* is grand larceny. Upon conviction, the person is guilty of a felony and must be fined in the discretion of the court or imprisoned not more than:
>
> (1) five years if the value of the personalty is more than one thousand dollars but less than ten thousand dollars;
>
> (2) ten years if the value of the personalty is five thousand dollars or more.

---

[1] Although Appellant frames his argument as an attack on the trial court's instructions, retroactive application of the amended section 16-13-30 would require reversal of his conviction.

[2] There are four basic requirements to preserving issues at trial for appellate review. The issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity. JEAN H. TOAL, SHAHIN VAFAI & ROBERT A. MUCKENFUSS, APPELLATE PRACTICE IN SOUTH CAROLINA, 57 (2nd ed. 2002).

S.C. Code Ann. § 16-13-30 (B)(1)–(2) (2003) (emphasis added). On June 2, 2010, the General Assembly amended section 16-13-30 through enactment of the Omnibus Crime Reduction and Sentencing Reform Act of 2010 (the Act). *See* Act No. 273, § 16.E, 2010 S.C. Acts & Joint Resolutions (2010). This amendment redefined grand larceny as, "larceny of goods, chattels, instruments, or other personalty valued in excess of *two thousand dollars*." S.C. Code Ann. § 16-13-30 (Supp. 2011) (emphasis added). The General Assembly included a savings clause within the Act. The savings clause provides:

> The repeal or amendment by the provisions of this act or any law, whether temporary or permanent or civil or criminal, ***does not affect pending actions***, rights, duties, or liabilities founded thereon, or alter, discharge, release, or extinguish any penalty, forfeiture, or ***liability incurred under the repealed or amended law***, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Act No. 273, § 65 (emphasis added).

At Appellant's trial in 2011, the trial court instructed the jury on the version of section 16-13-30 in effect at the time Appellant committed the offense. Thus, the trial court instructed:

> The state must prove that the value of the [vehicle] taken *was $1,000 or more*. An owner of personal property may provide an estimate of the reasonable value of personal property. If the state has failed to prove the defendant guilty of grand larceny, you may consider whether the defendant is guilty of the offense of petit larceny. Proof of petit larceny includes proof of the same elements as grand larceny except that the value is $1,000 or less.

(emphasis added).

The cardinal rule of statutory construction is to ascertain and effectuate legislative intent whenever possible. *State v. Baucom*, 340 S.C. 339, 342, 531 S.E.2d 922, 923 (2000). The Court should give words "their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010). A statute is not to be applied retroactively unless that result is so clearly compelled as to leave no room for doubt. *S.C. Nat'l Bank v. S.C. Tax Comm'n*, 297 S.C. 279, 281, 376 S.E.2d 512, 513 (1989). The statute must contain express words evincing intent that it be retroactive or words necessarily implying such intent. *Pulliam v. Doe*, 246 S.C. 106, 110, 142 S.E.2d 861, 863 (1965). The only exception to this rule is a statutory enactment that effects a change in remedy or procedure. *Jenkins v. Meares*, 302 S.C. 142, 146, 394 S.E.2d 317, 319 (1990) ("Our decisions recognize a presumption that statutory enactments are to be given prospective rather than retroactive effect. An exception to this presumption arises when the enactment is remedial or procedural in nature."). A savings clause is a restriction in a repealing act, intended to save rights, pending proceedings, penalties, etc., from the annihilation which would result from an unrestricted appeal. *Pierce v. State*, 338 S.C. 139, 146 n.3, 526 S.E.2d 222, 225 n.3 (2000) (quoting Black's Law Dictionary 1343 (1990)). Generally, the repeal of a statute without the inclusion of a savings clause operates retroactively to expunge pending claims, but the inclusion of a proper savings clause will have the effect of preserving a pending suit. *Chem-Nuclear Sys., LLC v. S.C. Bd. of Health and Envtl. Control*, 374 S.C. 201, 205, 648 S.E.2d 601, 603 (2007).

Appellant argues that the statutory change actually contained no savings clause, and that retroactive application is clearly compelled because the statute concerns a monetary amount. Appellant's argument regarding the absence of a savings clause is merely an attempt to confuse the issues. While the General Assembly did not include a savings clause in the amended version of section 16-13-30, the amendment took place by operation of the Act, which contains a savings clause. The General Assembly's inclusion of a savings clause demonstrates clear legislative intent to avoid disrupting pending or ongoing criminal prosecutions. To read the savings clause in any other way would result in a prohibited alteration of the statute's operation.[3] Moreover, section 16-13-30's savings clause provides that

[3] The savings clause in this case does contain an ambiguous term. The savings clause refers to "pending" actions, and it is unclear when an action is pending. For example, this term could refer to either the actual commission of the crime, the arrest, or the indictment. This Court's opinion in *State v. Thrift*, 312 S.C. 282, 440 S.E.2d 341 (1994) is instructive on this point.

the amendment to section 16-13-30 does not affect liability incurred under the prior version of the statute. Appellant clearly incurred liability for grand larceny at the time he committed the crime. Thus, the trial court did not err in charging the jury under the version of section 16-13-30 in effect at the time Appellant committed grand larceny.

In analyzing the trial court's dismissal of indictments in *Thrift*, this Court examined the General Assembly's amendment of the state's ethics law. The Attorney General obtained indictments, pursuant to section 8-13-490 of the South Carolina Code, covering acts of bribery the defendants committed in 1991. *Thrift*, 338 S.C. at 289, 440 S.E.2d at 345. However, the Attorney General did not obtain these indictments until 1992, and by that time the General Assembly had amended section 8-13-490. *Id.* at 290, 440 S.E.2d at 346. The trial court reasoned that the "new" law constituted an effective repeal of the prior law, and the trial court dismissed those indictments. *Id.*

However, the "new" law merely reenacted, in a different article, a more comprehensive series of statutes which addressed in greater depth the conduct formally violative of section 8-13-490. *Id.* at 304, 440 S.E.2d at 353. The Court looked to the plain meaning of the "new" law which clearly stated the legislative intent to amend the "old" law rather than to repeal it. *Id.* Additionally, in rejecting the implied repeal argument, this Court did not recognize a distinction between commission and indictment:

> Given the overall climate in which the legislation was amended and the more stringent guidelines set forth in the new Act, it is apparent that the legislature did not intend to permit someone to escape prosecution for acts of bribery or similar activity *committed* prior to the amendment of the legislation.

Id. at 306, 440 S.E.2d at 354 (emphasis added); *see also Pierce*, 338 S.C. at 148, 526 S.E.2d at 226 ("[I]f there is no applicable saving provision, does the amendment impliedly repeal the old statute so as to prevent further prosecutions thereunder, under the common law rule . . . that repeals operate to bar further prosecutions in the absence of saving provisions? Some cases have so held, but it seems clear that the legislature can hardly have intended by its amendment that the conduct in question should no longer be prosecuted (the rationale of the common law rule of repeal")).

II. Directed Verdict

Appellant argues that the State failed to prove that the stolen vehicles met the statutory monetary threshold for grand larceny. We disagree.

At the time of Appellant's crime, larceny of goods, chattels, instruments, or other personalty valued in excess of $1,000 constituted grand larceny. S.C. Code Ann. § 16-13-30 (2003). In prosecutions for grand larceny, proof of the value of the property stolen is an essential element of the State's case. 52B C.J.S. *Larceny* § 174 (2008). Under South Carolina law, a property owner is generally qualified by the fact of ownership to give her estimate concerning the value of her property unless the owner's lack of qualification is so complete as to render that testimony entirely worthless. *Seaboard Coast Line R.R. v. Harrelson*, 262 S.C. 43, 46, 202 S.E.2d 4, 5 (1974). The rationale for allowing this testimony is that the owner should not be deprived of property without an opportunity to express her own view of the property's value to the jury. *S.C. State Highway Dep't v. Grant*, 265 S.C. 28, 32, 216 S.E.2d 758, 759 (1975).

Two cases, *State v. Smith*, 274 S.C. 622, 266 S.E.2d 422 (1980), and *State v. Waller*, 280 S.C. 300, 312 S.E.2d 552 (1984), are instructive on the specific use of a property owner's testimony to support a grand larceny conviction.

In *Smith*, the State charged the defendant with housebreaking and grand larceny, alleging the defendant stole a watch. 274 S.C. at 623–24, 266 S.E.2d at 422–23. The defendant moved for a directed verdict on the grand larceny charge, and the trial court denied the motion. *Id.* at 623, 266 S.E.2d at 422. The defendant argued that the State failed to prove that the watch was worth at least fifty dollars. *Id.* at 624, 266 S.E.2d at 423. This Court agreed:

> There is evidence that the watch in question was a Helbros gold watch with a broken band given to the victim by his grandfather and that it was worn on occasions for dress. The watch in question was introduced into evidence. *There was no testimony, circumstantial or direct, that this watch had a value of at least fifty dollars.* Even reviewing the evidence in the light most favorable to the State the value of the watch was left entirely to conjecture and speculation by the jury and the lower court should have granted the motion for a directed verdict as to the charge of grand larceny.

Id. (emphasis added).

In *Waller*, the defendant appealed his grand larceny conviction. 280 S.C. at 300, 312 S.E.2d at 552. The primary issue in that case was whether the larceny of property from different owners at the same time and at the same place constituted one or several larcenies. *Id.* at 301, 312 S.E.2d at 552–53. However, the Court briefly addressed the method by which the State proved the value of the stolen items:

> [The defendant] forcibly entered an apartment occupied by three roommates and took property belonging to each. The property was never recovered. At trial, each roommate estimated the value of the items taken. [The defendant] concedes the aggregate value of the property exceeded Two Hundred ($200.00) Dollars, the statutory minimum to sustain a conviction of grand larceny. However, [the defendant] argues the value of the property taken from more than one owner cannot be aggregated so as to sustain a conviction of grand larceny should the value of property taken from each owner be less than Two Hundred ($200.00) Dollars, and he argues the testimony presented at trial is insufficient to show the value of the property taken from any one of the three roommates equals Two Hundred ($200.00) Dollars.

Id. at 301, 312 S.E.2d at 552–53. The Court found the roommates' testimony regarding the property's value sufficient:

> However, we are satisfied the evidence presented at trial was sufficient to permit a jury to conclude that the value of the property taken from one of the roommates did exceed Two Hundred ($200.00) Dollars.

Id. at 301 n.1, 312 S.E.2d at 553 n.1; *see also State v. Humphrey*, 276 S.C. 42, 44, 274 S.E.2d 918, 918–19 (1981) (holding that the property owner's testimony alone placed the value of the stolen property above the amount necessary to constitute grand larceny); *S.C. State Highway Dep't. v. Grant*, 265 S.C. 28, 32, 216 S.E.2d 758, 759–60 (1975) (holding that "the jury is the tribunal to determine the weight to be accorded the testimony of the witnesses and accept or reject the valuations placed thereupon."); *Seaboard Coast Line*, 262 S.C. at 46, 202 S.E.2d at 5 (stating "the owner of an article whether he is familiar with such values or not, ought certainly be allowed to estimate its worth; the weight of this testimony (which often would be trifling) may be left for the jury; and courts have usually made no objections to this policy") (citing 3 Wigmore, *Evidence* § 716 (Chadbourn Rev.

1970)); *State v. Masters*, 373 S.E.2d 173, 176 (W.Va. 1988) ("The testimony of the owner concerning the value of the property when purchased and of recent sales prices was sufficient to permit the jury to find the defendant guilty of taking property having a value of $200 or more."); *N. C. State Highway Comm'n v. Helderman*, 207 S.E.2d 720, 725 (N.C. 1974) ("Unless it affirmatively appears that the owner does not know the market value of his property, it is generally held that he is competent to testify as to its value even though his knowledge on the subject would not qualify him as a witness were he not the owner . . . . The weight of his testimony is for the jury, and it is generally understood that the opinion of the owner is so far affected by bias that it amounts to little more than a definite statement of the maximum figure of his contention.") (internal citations omitted).

The foregoing authority is clear that a property owner is competent to testify regarding the value of damaged or stolen property. To the extent there is confusion, we take this opportunity to clarify that a property owner's testimony alone is sufficient to support a conviction for grand larceny.

In the instant case, Robert testified concerning the vehicle's worth:

> Well just to give a decent price, I'd say about $1200. Because I paid, when I bought the car, I bought as it as it was at $700. And I put over $500 into it. I mean, as parts not labor . . . . Just parts. And you know, I would have more in the car than $1200 if I would just put on my labor. Because I've done—I done the mechanical work myself.

Appellant's trial counsel cross-examined Robert extensively regarding the stolen vehicle's worth. Trial counsel pointed out that Robert could not produce the vehicle's original title or proof of insurance demonstrating that he recently used the vehicle. Robert admitted under cross-examination that he could not produce the original bill of sale for the car:

> Q: Did somebody tell you that you were going to have to prove the value of the car?
>
> A: Yes.
>
> Q: Didn't you think maybe the bill of sale as to how much you paid for it might be helpful? That didn't occur to you?
>
> A: No.

Q: No, just didn't occur to you, how much I paid for it as to what the value was.

A: No, because after I bought the car, the car is mine. And I know what—I don't know exactly what the book price. She told me what it was. But I know I couldn't get what the book price, because it's not up to top priority as being in that standard. But from what I got in the car and what I want for the car, I mean, I could simply say that. But I am not going on the value of what the car is worth.

. . . .

Q: You didn't even bring a blue book value of the car in here today, did you?

A: I wasn't told to bring a blue book.

. . . .

Q: Oh, well, you're on the stand here though, aren't you? And this is supposedly your car, right?

A: That's right.

Q: We have nobody telling us what the car is worth, do we? No independent and nobody to tell us what you paid for it. Nobody to tell us the blue book value. No pictures so we can look and see what condition it was in. Do you have any pictures? Let me—if you left here at lunch and went home, I bet you couldn't show one picture of that car, could you? If we gave you an hour, you couldn't go home and find one picture of that car, could you?

A: No, I don't have a picture of the car.

Q: Could you go home and find a copy of that bill of sale that you claim you paid $700 for?

A: Yes, sir. If I have to, I would. Because—

Q: Do you have it at home? Do you know where it is at home?

A: I don't have it in my presence.

Q: Do you have it at home? Do you know where it is at home?

A: I have to look for it.

Q: You have to look for it.

Lawrence, owner of the 1987 Ford Taurus, testified to the vehicle's good condition. The vehicle actually belonged to Lawrence's deceased father, and Lawrence came into possession as an heir. Lawrence testified that he did not plan to sell the vehicle due to its sentimental value, but that the vehicle's fair market value was $1,100. Lawrence admitted under cross-examination that he could not produce any documentation or other evidence in support of his estimation of the vehicle. He could also not show that the car had been driven recently or at the time of his father's death. However, Lawrence testified that he arrived at the value based on independent research:

Q: [Lawrence], just a couple of follow-up questions. [Appellant's trial counsel] asked you whether or not you knew the blue book value of the vehicle.

A: Yes.

. . . .

Q: And did you in fact look to try to determine what the blue book value if any your vehicle was?

A: I did.

Q: And what is the minimum retail value of that vehicle?

A: $1,080.

Q: And if it was in pristine prime condition what would be the retail value today?

A: $2,678.

Following the close of the State's case, Appellant's trial counsel moved for a directed verdict:

> I make a motion for directed verdict. The main reason is, they haven't come in here and proven anything. All they have done in here is come in here and talk. They haven't come in here and put any documents up which were available, to prove any of their assertions or whatever. So for that reason, I would ask that a verdict be directed at this time. If what they were saying is true, they could have easily proven it. They didn't because they are not telling the truth about whether these cars have been driven in the last ten or fifteen years.

The trial court denied trial counsel's motion, finding:

> I believe it goes to the weight of the evidence. And, [trial counsel], I am sure you are going to argue that to the jury. Are—also the law states that an owner of personal property provide [sic] an estimate of reasonable value of that personal property. And for that reason, I am denying your motions.

Based on the testimony presented at trial, the trial court did not err in refusing to grant Appellant's directed verdict motion. In reviewing a motion for directed verdict, the trial court is instructed to view the evidence in the light most favorable to the State, and if there is any direct or substantial circumstantial evidence tending to prove the guilt of the accused, the case should be submitted to the jury. *State v. Pinckney*, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000). In this case, the property owners' testimony constituted "any" direct evidence and gave rise to more than mere suspicion regarding Appellant's guilt. Moreover, neither the established rule nor the trial court prevented Appellant's trial counsel from going to great lengths to demonstrate any possible weakness or bias in the property owners' testimony.

CONCLUSION

Based on the foregoing, Appellant's convictions are

AFFIRMED.

BEATTY, KITTREDGE and HEARN, JJ., concur. PLEICONES, J., concurring in result only.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

James and Diane Youngblood, Respondents,

v.

South Carolina Department of Social Services,
Defendant,

v.

Jane and John Doe, Intervenors,

of whom, Jane and John Doe are the Petitioners.

Appellate Case No. 2012-212047

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Pickens County
W. Marsh Robertson, Family Court Judge

Opinion No. 27232
Heard January 8, 2013 – Filed March 8, 2013

REVERSED

Vanessa H. Kormylo, of Greenville, for Petitioners.

Sarah G. Drawdy, of The Drawdy Law Firm, LLC, of Anderson, for Respondents.

JUSTICE HEARN: In this case we must decide whether former foster parents have standing to petition to adopt a child placed for adoption by the Department of Social Services (DSS) with a different family. We hold the former foster parents possess neither statutory nor constitutional standing, and reverse.

FACTUAL/PROCEDURAL BACKGROUND

Child was born in 2006 and is the youngest of five siblings. On August 28, 2007, the children were removed from their biological parents by DSS. Thereafter, on October 12, 2007, Child was placed for foster care with the Youngbloods and Child's siblings were placed with other foster care providers.[1] Child remained with the Youngbloods continuously, although with regular sibling visitation, until June 24, 2009.

DSS informed the Youngbloods by mail on April 27, 2008, that adoption was Child's permanent care plan and advised them as to what actions they needed to take in order to be considered as adoptive parents for Child. The letter went on to state that "if the child in your home has a sibling or siblings placed in a different foster home, it will be the first priority of this agency to reunite and place these siblings together for the purpose of adoption." The Youngbloods applied to adopt Child and completed the required home study, but they did not apply to adopt her siblings.

On March 17, 2009, DSS informed the Youngbloods that they had not been selected as Child's adoptive parents and she had been placed with another family.[2] Specifically, the letter stated:

---

[1] Initially, one of Child's brothers was placed with the Youngbloods as well, but due to his behavioral problems, he was moved to a different placement after only a few weeks.

[2] Rather than its ordinary meaning connoting a change in physical location, the verb "place" is used by the statutory language and DSS to mean the selection of an adoptive family. While Child had been placed with another family as of March 17, 2009, she physically remained in the care of the Youngbloods at that time.

> Your adoptive home study has been received and approved. Please note that you had applied originally for the placement of [Child]. However, this sibling group of five has been placed together. Given these circumstances, your approved home study will be placed in our state office files for consideration when a child with the characteristics in which you are interested in parenting become available for adoption.

The adoptive family selected by DSS was the Does. Subsequently, DSS gave the Youngbloods the requisite ten days' written notice of Child's removal from their foster care. From this point on, four separate, overlapping actions were filed: DSS's termination of parental rights suit, the Youngbloods' administrative appeal of Child's removal, the Youngbloods' adoption action, and the Does' adoption action.

First, on January 30, 2009, DSS filed an action seeking to terminate the parental rights of Child's parents. On May 8, 2009, the Youngbloods filed an administrative appeal with DSS's Fair Hearing Committee concerning the impending removal of Child from their home. Child was removed from the Youngbloods' home on June 24, 2009, and placed, along with her siblings, with the Does. Then, on July 6, 2009, the Youngbloods filed the instant adoption action in family court for the adoption of Child, naming DSS as defendant. On July 29, 2009, the Does filed an action petitioning the family court to permit them to adopt Child and her four siblings.

On July 30, 2009, the Fair Hearing Committee issued a final administrative order denying the Youngbloods' administrative appeal. The Committee stated the issues before it were whether DSS followed the requisite procedure in removing Child and whether DSS afforded the Youngbloods due process. The Committee found DSS followed the required procedure by giving the Youngbloods ten days' notice of the removal and afforded them procedural and substantive due process because it provided notice and a rational explanation—placement with her siblings—for the removal. The Youngbloods did not appeal the Committee's decision.

In the Youngblood's adoption action, the family court entered an expedited temporary order on August 4, 2009, granting them custody of Child. The court also granted a motion to intervene by the Does, found that visitation between Child

and her siblings would be in her best interests, and directed the parties, Child's therapist, and the guardian *ad litem* to formulate a visitation schedule.

On August 24, 2009, the family court entered a final order in DSS's termination of parental rights action granting the requested termination. Additionally, the order provided: "Custody of the Defendant children shall be granted to the South Carolina Department of Social Services, with all rights of Guardian ad Litemship, placement, care and supervision, including the sole authority to consent to any adoption . . . ."

On May 4, 2010, the family court entered a final adoption order for Child's four siblings declaring the Does to be the legal parents of those four children. However, the family court took no action regarding Child due to the Youngbloods' pending adoption action.

In the Youngbloods' adoption action, both the Does and DSS moved to dismiss on the grounds the Youngbloods lacked standing and were statutorily barred from adopting Child because DSS had not consented to the adoption. The family court found the Youngbloods had standing pursuant to Section 63-9-60 of the South Carolina Code (2012). The court distinguished *Michael P. v. Greenville County Department of Social Services*, 385 S.C. 407, 684 S.E.2d 211 (Ct. App. 2009), in which the court of appeals held that former foster parents did not have standing to seek adoption of a child in DSS's custody, on the basis that here, the Youngbloods informed DSS of their desire to adopt Child, obtained DSS's approval to serve as adoptive parents prior to removal of Child,[3] and timely pursued an administrative appeal of the removal of Child. The family court then considered Child's best interests and granted the Youngbloods' petition to adopt Child, subject to sibling visitation.

The Does and the Youngbloods filed cross-appeals with the court of appeals. Relevant to our writ of certiorari, the Does asserted that the family court erred in finding the Youngbloods had standing to adopt, granting the Youngbloods' adoption petition without the consent of DSS, and finding adoption of Child by the

[3] Presumably, this refers to the approval of the Youngbloods' home study and thus, to their approval to adopt *a* child. The Youngbloods never received DSS approval to adopt Child.

Youngbloods was in Child's best interests.[4] *Youngblood v. DSS*, Op. No. 2012-UP-172 (S.C. Ct. App. filed March 8, 2012).

In a per curiam, unpublished opinion, the court of appeals ruled against the Does on all grounds. The court acknowledged the holding in *Michael P.* that former foster parents do not have standing under section 63-9-60 to seek adoption of a child placed in an adoptive home by DSS, and noted that the Youngbloods' "broad window to petition the family court under section 63-9-60(A)(1) had closed." However, the court of appeals, apparently sua sponte, held that Section 63-9-310(D) of the South Carolina Code (2010) provided standing to the Youngbloods. According to that section, when DSS denies consent to adopt to a person eligible under section 63-9-60, it has "an affirmative duty to inform the person who is denied consent of all of his rights for judicial review of the denial." S.C. Code Ann. § 63-9-310(D). Based on that provision, the court of appeals held:

> any person who is initially eligible to adopt under section 63-9-60 and who is aggrieved by a child-placing agency's decision to deny them consent to adopt a specific child may petition the family court to review the child-placing agency's decision in order to determine whether it was in the child's best interests.

Finally, the court affirmed the family court's finding that placement with the Youngbloods was in Child's best interests, holding the Does failed to present sufficient evidence to meet their burden on this issue.

ISSUES

I. Did the court of appeals err in holding the Youngbloods had standing to petition to adopt Child?

II. Did the court of appeals err in affirming the family court's grant of the Youngbloods' petition to adopt despite the lack of consent by DSS?

[4] The Does did not seek certiorari on the issue of Child's best interests, and the Youngbloods did not seek certiorari on any of the issues presented in their appeal.

LAW/ANALYSIS

I. STANDING

Standing, a fundamental prerequisite to instituting an action, may exist by statute, through the principles of constitutional standing, or through the public importance exception. *Freemantle v. Preston*, 398 S.C. 186, 192, 728 S.E.2d 40, 43 (2012). Statutory standing exists, as the name implies, when a statute confers a right to sue on a party, and determining whether a statute confers standing is an exercise in statutory interpretation. *See id.* at 194-95, 728 S.E.2d at 44-45; *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 97 n.2 (1998) (stating the issue of statutory standing as "whether this plaintiff has a cause of action under the statute"). When no statute confers standing, the elements of constitutional standing must be met.[5] To possess constitutional standing, first, a party must have suffered an injury-in-fact which is a concrete, particularized, and actual or imminent invasion of a legally protected interest. *ATC South, Inc. v. Charleston Cnty*, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). Second, a causal connection must exist between the injury and the challenged conduct. *Id.* Finally, it must be likely that a favorable decision will redress the injury. *Id.*

First, while the family court found statutory standing pursuant to section 63-9-60, we hold that statute does not give the Youngbloods standing; instead, it specifically deprives them of standing. Section 63-9-60 provides:

> (A)(1) Any South Carolina resident may petition the court to adopt a child.
>
> . . . .
>
> (B) This section does not apply to a child placed by the State Department of Social Services or any agency under contract with the department for purposes of placing that child for adoption.

Thus, while section 63-9-60(A) broadly grants standing to "any South Carolina resident," section 63-9-60(B) makes that grant of standing inapplicable to a child placed for adoption by DSS. *See Michael P.*, 385 S.C. at 415, 684 S.E.2d at 215

[5] While the public importance exception may provide standing where the elements of constitutional standing are not met, the exception was not raised in this action.

(holding former foster parents did not have standing to adopt under section 63-9-60 because the child had been placed by DSS for adoption).

The court of appeals dealt with the interplay of 63-9-60(A) and (B) in *Michael P.*, where a child was removed from his mother by DSS and placed in foster care. *Id.* at 410, 684 S.E.2d at 212. When DSS approached the foster parents about adopting the child, they declined. *Id.* DSS then removed the child from the foster home and placed him for adoption. *Id.* Unhappy with the placement, the former foster parents petitioned to adopt the child. *Id.* The prospective adoptive parent selected by DSS intervened and moved to dismiss the action on the ground the foster parents lacked standing. *Id.* at 411, 684 S.E.2d at 213. The foster parents asserted they had standing both under section 63-9-60 and because they were foster parents. *Id.* at 412, 684 S.E.2d at 213. The family court granted the motion to dismiss, and the foster parents appealed. *Id.* at 412-13, 684 S.E.2d at 213-14. The court of appeals first dismissed the foster parents' argument that subsection (B) does not apply to section 63-9-60 in its entirety. *Id.* at 415, 684 S.E.2d at 215. Relying on subsection (B), the court of appeals held that "not just any 'South Carolina resident' can petition to adopt a child when the child has been placed by DSS in another home for the purposes of adoption," and therefore, concluded the foster parents did not have standing under section 63-9-60(A) because the child had been placed by DSS in another home for adoption. *Id.*

Here, the family court distinguished the *Michael P*. decision, finding that under the facts of this case, section 63-9-60 created standing because the Youngbloods informed DSS of their desire to adopt Child, received DSS's approval to adopt prior to the placement of Child, had their foster care contract terminated, and pursued an administrative challenge to Child's removal. It is important to note that while the Youngbloods received DSS's approval to serve as adoptive parents generally, they did not receive approval to adopt Child. While both couples were approved for adoption, only the Does had DSS's consent to adopt Child. Because the statute does not permit any exceptions and plainly states that the section 63-9-60(A) grant of standing does not apply to children placed by DSS, the family court erred in grounding standing on section 63-9-60.

The court of appeals, as an alternative to section 63-9-60, held, based on DSS's denial of consent for the Youngbloods to adopt Child, that section 63-9-310(D) created standing. In short, the court of appeals held that under section 63-9-310, a person denied consent to adopt by DSS has a statutory right to petition the family court for judicial review of that denial. We disagree.

Section 63-9-310 provides:

> (B) Consent or relinquishment for the purpose of adoption is required of the legal guardian, child placing agency, or legal custodian of the child if authority to execute a consent or relinquishment has been vested legally in the agency or person and:
>
> > (1) both the parents of the child are deceased; or
> >
> > (2) the parental rights of both the parents have been judicially terminated.
>
> . . . .
>
> (D) If the consent of a child placing agency required by this subsection is not provided to any person eligible under Section 63-9-60, the agency has an affirmative duty to inform the person who is denied consent of all of his rights for judicial review of the denial.

S.C. Code Ann. § 63-9-310. The statute defines consent as: "the informed and voluntary release in writing of all custodial or guardianship rights, or both, with respect to a child by the child placing agency . . . ." S.C. Code Ann. § 63-9-30(6) (2010).[6]

First, section 63-9-310(D) does not apply to the Youngbloods because they were not persons eligible under section 63-9-60. They were denied consent to adopt Child in DSS's March 17, 2009 letter, and Child had already been placed with the Youngbloods as of that date. Therefore, under section 63-9-60(B), the Youngbloods were not persons eligible to adopt Child when they were denied consent.

Furthermore, section 63-9-310(D) does not provide a right to judicial review. While it does direct DSS to inform a person denied consent of "all of his rights to judicial review," a statutory directive to inform persons of their rights does not in itself create rights. Although it is curious that the General Assembly would direct DSS to inform persons of their rights to judicial review if no such

[6] Additionally, the South Carolina Children's Code requires that a consent be a sworn document containing specific information. S.C. Code Ann. § 63-9-330 (2010).

rights exist, where the plain language of a statute is unambiguous we are charged with implementing it. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Here, the statute unambiguously does nothing more than direct DSS to inform persons of any rights they may have.

Therefore, we must look elsewhere to determine whether a right to judicial review and standing exist. The parties did not direct us to a statute providing a right to judicial review and reviewing the entirety of the South Carolina Children's Code as well as the applicable regulations, we found no mention of judicial review for the denial of consent to adopt, other than section 63-9-310(D). To the contrary, DSS's regulations provide:

> A. Application to Become Adoptive Parent – Right to Appeal
>
> (1) A person is entitled to appeal the Department's decision to deny or terminate its approval of that person to become an adoptive parent.
>
> (2) A person is not entitled to appeal the Department's decision to deny its consent or refuse approval of the applicant for adoption of a specific child . . . .

10 S.C. Code Ann. Regs. § 114-150 (2012).

Lacking a statutory right to judicial review, we must determine whether the denial of consent implicates a legal interest held by the Youngbloods, and thus whether due process requires judicial review and they possess constitutional standing. *See ATC South*, 380 S.C. at 195, 669 S.E.2d at 339 (constitutional standing requires an injury to a legally protected interest); *Sullivan v. S.C. Dept. of Corr.*, 355 S.C. 437, 444-45, 586 S.E.2d 124, 127-28 (2003) (a prisoner was not entitled to judicial review of the denial of his application to participate in a treatment program because he did not have a protected interest in participation in the program); *Al-Shabazz v. State*, 338 S.C. 354, 368-72, 527 S.E.2d 742, 749-52 (1999) (holding that because a prisoner's good-time credits are a protected liberty interest under the Fourteenth Amendment, procedural due process requires judicial review when they are taken as punishment).

First, the court of appeals' holding that any person denied consent to adopt has standing to seek review of the agency's decision is erroneous because there is no general legal interest in the adoption of any child. Rather, any protected interest a person may have in a child must arise from some legally recognized connection

between the child and the adult. *See Smith v. Org. of Foster Families for Equal. & Reform*, 431 U.S. 816, 841-47 (1977) (indicating that only some relationships between an adult and a child are legally protected).

However, the Youngbloods were not just any persons—they were Child's foster parents. While the foster care relationship undoubtedly often results in emotional attachments between the foster parent and foster child, the relationship is only a temporary, contractual relationship created by the State. *See Smith*, 431 U.S. at 845-46 (recognizing the foster care relationship as derived from state law and contractual arrangements); *Michael P.*, 385 S.C. at 416, 684 S.E.2d at 216 (same); 10 S.C. Code Regs. 114-550(A)(1) (2012) (defining foster care as "a temporary living arrangement within the structure and atmosphere of a private family home, [which] is utilized while permanent placement plans are being formulated for the involved children"). Accordingly, the foster parent relationship, absent statutory law to the contrary, is insufficient to create a legally protected interest in a child and therefore, does not create standing to petition to adopt.

While these conclusions necessarily flow from the South Carolina Children's Code and our standing and due process jurisprudence, they are also supported by the policy behind the Children's Code. The General Assembly has entrusted DSS with the care and placement of children removed from their homes. *See* S.C. Code Ann. § 63-7-660 (2010) (DSS may remove a child from his or her home and has legal custody of the child thereafter if there is probable cause to believe abuse or neglect has occurred); § 63-9-310(B) (DSS must consent to the adoption of any child in DSS's custody); § 63-9-1810 (2010) (DSS has authority to promulgate regulations governing the adoption of children); § 63-11-60 (2010) (DSS may place children in foster homes and remove them when it believes a child's welfare so requires). Furthermore, the Child Protection and Permanency Chapter of the Children's Code, Section 63-7-10, *et seq.*, under which the termination of parental rights provisions are found, states that its purpose is to "ensure permanency on a timely basis for children when removal from their homes is necessary." S.C. Code Ann. § 63-7-10-(B)(3) (2010). Permitting any person, or even just foster parents, to petition to adopt a child placed elsewhere for adoption by DSS directly contradicts the power and discretion given to DSS and undermines the goal of rapidity in permanently resolving children's placement issues.

The Youngbloods argue that denying them standing to petition to adopt will result in Child's best interest never being considered and give DSS unfettered power to make decisions affecting the welfare of children. However, those fears

are unfounded. In administering its adoption program, DSS is statutorily charged with serving the best interests of the child. S.C. Code Ann. § 63-9-1310 (2010) ("It is the purpose of this article to achieve the objective of the best interests of the child, as the primary client. Adoption programs must be structured so that all questions of interpretation are resolved with that objective in mind."). Additionally, the Children's Code requires that at the adoption hearing, the family court must consider whether "the best interests of the adoptee are served by the adoption," before deciding to grant or deny DSS's proposed adoption. S.C. Code Ann. § 63-9-750(B)(6) (2010). Furthermore, in every adoption proceeding the child must have a guardian *ad litem* and also, if necessary, an attorney, representing his or her best interests. *See* S.C. Code Ann. § 63-7-2560(B) (2010). Therefore, while DSS may make the initial adoption placement decision for a child in its custody, DSS's decision is subject to judicial review and will be denied if not in the child's best interests.

II. CONSENT

Because the Youngbloods' lack of standing is dispositive, we need not reach the issue of DSS's consent. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (declining to address the remaining issues where a prior issue was dispositive).

CONCLUSION

In order to ensure that our State resolves the permanent placement of children in its custody promptly, the General Assembly has entrusted DSS with discretion in making the initial decision as to the adoption of such children, and the rights of others to petition to adopt have been limited. If any person could petition to adopt a child in DSS's custody despite DSS having placed the child with another, the placement of such children would become protracted contests, like the instant case, in which the vital interests of stability, permanency, and attachment would be irretrievably lost to the passage of time. Nonetheless, we are deeply troubled by the notion of again uprooting and moving Child.

Accordingly, we vacate the order granting the Youngbloods' petition to adopt Child, and we remand the custody of Child to DSS for adoptive placement.

However, recognizing that children develop rapidly, and that stability and attachment are important components in their growth and development, we direct DSS to consider Child's present best interests in placing her for adoption.

TOAL, C.J., PLEICONES, BEATTY, and KITTREDGE, JJ., concur.

The Supreme Court of South Carolina

In the Matter of Horace Anderson Jones, Jr., Respondent.

Appellate Case No. 2013-000467

ORDER

The Office of Disciplinary Counsel petitions this Court to place respondent on interim suspension pursuant to Rules 17(b) and 17(c) of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). The petition also seeks appointment of an attorney to protect the interests of respondent's clients pursuant to Rule 31, RLDE, Rule 413, SCACR. Respondent consents to the issuance of an order of interim suspension in this matter.

IT IS ORDERED that respondent's license to practice law in this state is suspended until further order of this Court.

IT IS FURTHER ORDERED that Christi P. Cox, Esquire, is hereby appointed to assume responsibility for respondent's client files, trust account(s), escrow account(s), operating account(s), and any other law office accounts respondent may maintain. Ms. Cox shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of respondent's clients. Ms. Cox may make disbursements from respondent's trust account(s), escrow account(s), operating account(s), and any other law office accounts respondent may maintain that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating account(s) of respondent, shall serve as an injunction to prevent respondent from making withdrawals from the account(s) and shall further serve as notice to the bank or other financial institution that Christi P. Cox, Esquire, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that Christi P. Cox, Esquire, has been duly appointed by this Court and has the authority to receive respondent's mail and the authority to direct that respondent's mail be delivered to Ms. Cox's office.

Ms. Cox's appointment shall be for a period of no longer than nine months unless an extension of the period of appointment is requested.

s/ Jean H Toal C.J.
FOR THE COURT

Columbia, South Carolina

March 11, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Francis Larmand, Appellant.

Appellate Case No. 2009-144086

Appeal From York County
William H. Seals, Jr., Circuit Court Judge

Opinion No. 5097
Heard November 29, 2012 – Filed March 13, 2013

REVERSED

C. Rauch Wise, of C. Rauch Wise Attorney at Law, of Greenwood, and John D. Rhea, of McKinney, Givens, Tucker & Rhea, of Rock Hill, for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney General John W. McIntosh, Senior Assistant Deputy Attorney General Salley W. Elliott, and Assistant Attorney General Deborah R.J. Shupe, all of Columbia, and Solicitor Kevin S. Brackett, of York, for Respondent.

PER CURIAM: Francis Larmand appeals his convictions for second-degree lynching, conspiracy, and pointing and presenting a firearm. He argues the trial court erred in: (1) submitting his written charge to the jury; (2) not directing a

verdict on the charges of lynching, conspiracy, and pointing and presenting a firearm; and (3) charging the jury that it may infer all persons who are present as members of a mob when an act of violence is committed are guilty as principals. We reverse.

FACTS

Ryan Lochbaum worked for Larmand's wife, Kerriann, at Pop-A-Lock from 2005 to October 2008, when he was terminated.[1] Lochbaum filed for unemployment benefits; however, Kerriann testified against him, and he was denied benefits. Kerriann became suspicious that Lochbaum was intercepting calls from her business and reaching her customers before she could respond, so she and Larmand initiated a bogus call for locksmith services ("a mystery shopper call") to try to catch him answering the call.[2] In this particular instance, Larmand drove his truck to Knight's Stadium in Fort Mill, and Leo Lemire, Kerriann's brother, went with him. Kerriann placed a call to the central Pop-A-Lock dispatch in Lafayette, Louisiana, requesting to have a key made for someone who had locked his keys in his car at the stadium. However, no one responded to the call to provide locksmith services. Larmand then decided to drive to Lochbaum's house in Rock Hill to see if Lochbaum had a Pop-A-Lock magnet on his car or if any Pop-A-Lock employees were at his house.

Lochbaum testified he was sitting in his van in his driveway when Larmand walked up to his house and asked to talk to him. Lochbaum testified that as they spoke, he saw Lemire "walking toward [him] at a good clip, carrying a very large handgun." Lemire said to Lochbaum, "This is what you get when you f**k with my family," and pulled the hammer on the gun. Lochbaum asserted he reached for the gun, and as they were struggling, Larmand grabbed him around his neck. Eventually, Lochbaum got the gun from Lemire, and Larmand and Lemire ran off. Lochbaum's knuckles and hands were cut in the struggle to get control of the gun, but he did not sustain any other injuries.

---

[1] Pop-A-Lock is part of a national locksmith franchise company that provides roadside assistance and locksmith services for automotive customers.

[2] Kerriann testified a "mystery shopper call" is a technique used in the locksmith industry to detect call interception.

Larmand testified he did not know Lemire had a gun with him and did not conspire with him to point a firearm at Lochbaum. He testified he parked down the street from Lochbaum's house "to keep [Lemire] out of it [because] [h]e didn't need to be involved," and he told Lemire to stay in the truck. He further testified he never told Lemire about Lochbaum or that he thought Lochbaum was stealing business from Kerriann. Larmand said he told Lochbaum to leave Kerriann's company alone, and he admitted he was "agitated." He stated Lochbaum asked him why they were contesting his right to unemployment benefits. Larmand told him to "man up and get a job," and he started to walk back to his truck. As he was walking away with his back to Lochbaum, he heard Lemire yell, "Don't f**k with my family." He then saw Lemire and Lochbaum struggling with a gun. Larmand put one arm around Lochbaum to pull him off Lemire. Larmand testified Lochbaum took the gun from Lemire and said, "Get the hell out of here." Larmand testified he and Lemire then walked back to Larmand's truck and drove away.

Lemire testified Larmand did not ask him to bring the gun and did not know he had a gun with him. He stated Larmand asked him to go on a sting with him. They met at Larmand's house, and while Larmand was inside, Lemire grabbed his belongings from his car, including his gun, and got into Larmand's daughter's truck. He put the gun under the passenger seat. He claimed they did not talk about Lochbaum the entire night. After no one responded to the mystery-shopper call, Larmand asked Lemire if he would ride to a house with him to see if any of the cars had a Pop-A-Lock magnet or if any Pop-A-Lock employees were there. When they got to Lochbaum's house, Larmand told Lemire he was going to talk to someone and for him to wait in the truck. He denied that Larmand asked him to pull a gun on Lochbaum. When he heard someone yelling, Lemire got out of the truck and grabbed his gun. He walked to Lochbaum's house because he wanted to make sure Larmand was okay. He approached Lochbaum while holding the gun in the air and told him, "Don't f**k with my family." He testified he told Lochbaum not to mess with his family because he "thought they were gonna jump [Larmand] and beat the snot out of him." Lochbaum grabbed for the gun, and Lemire fell to the ground with Lochbaum on top of him. Lemire claimed he relinquished the gun when he was told the police were coming. He admitted the gun was loaded, but denied attempting to fire it. Lochbaum took the gun and pointed it at them. Larmand and Lemire then walked back to the truck and left.

Bystanders called the police, who stopped Larmand after he left the scene. During the traffic stop, Lemire was arrested for pointing and presenting a firearm and was

taken into custody. Larmand was not arrested at that time and was allowed to leave. Larmand was arrested the next day when he went to arrange bail for Lemire. Larmand was charged with second-degree lynching, conspiracy, and pointing and presenting a firearm. Lemire was charged with the same offenses.

A trial was held, and at the close of the State's case, Larmand made a motion requesting the court require the State to elect between proceeding on the conspiracy charge or the lynching charge. The court denied the motion. Larmand moved for a directed verdict on the charge of pointing and presenting a firearm, arguing the State presented no evidence he conspired with Lemire to have the gun, bring the gun, or brandish the gun. He also made a motion for a directed verdict on the charge of lynching, arguing there was no premeditation under the circumstances of the case. The court denied the motions. At the close of the defense's case, Larmand renewed his motions for directed verdict, which the court denied again.

The jury found Larmand guilty of conspiracy, second-degree lynching, and pointing and presenting a firearm.[3] The court sentenced him to ten years imprisonment for second-degree lynching and concurrent sentences of five years for criminal conspiracy and pointing and presenting a firearm. The court denied Larmand's motion for a new trial. This appeal followed.

STANDARD OF REVIEW

In criminal cases, this court sits to review errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous. *State v. Wilson*, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001). Thus, on review, the appellate court is limited to determining whether the trial court abused its discretion. *Id.* at 6, 545 S.E.2d at 829. An abuse of discretion occurs when the court's decision is unsupported by the evidence or controlled by an error of law. *State v. Garrett*, 350 S.C. 613, 619, 567 S.E.2d 523, 526 (Ct. App. 2002). A motion for directed verdict is properly denied when there is any evidence, direct or circumstantial, that reasonably tends to prove the defendant's guilt. *State v. Brandt*, 393 S.C. 526, 542, 713 S.E.2d 591, 599 (2011). "When reviewing a denial of a directed verdict, an

[3] Lemire was tried at the same time, and the jury also found him guilty of second-degree lynching, conspiracy, and pointing and presenting a firearm. Lemire filed a separate appeal.

appellate court views the evidence and all reasonable inferences in the light most favorable to the State." *Id.* "A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." *Id.*

LAW/ANALYSIS

I. Lynching

Larmand argues the trial court erred in not directing a verdict on the charge of lynching because the State failed to prove a premeditated intent to commit an act of violence upon another person. We agree.

At the time of Larmand's conviction for second-degree lynching, section 16-3-220 of the South Carolina Code defined second-degree lynching as "[a]ny act of violence inflicted by a mob upon the body of another person and from which death does not result . . . ." S.C. Code Ann. § 16-3-220 (2003).[4] Section 16-3-230 defined a mob as "the assemblage of two or more persons, without color or authority of law, for the premeditated purpose and with the premeditated intent of committing an act of violence upon the person of another." S.C. Code Ann. § 16-3-230 (2003).[5] "Although '[t]he common intent to do violence' may be formed before or during the assemblage, to sustain a conviction for lynching the State must produce at least some evidence of premeditation." *State v. Smith*, 352 S.C. 133, 137, 572 S.E.2d 473, 475 (Ct. App. 2002) (quoting *State v. Barksdale*, 311 S.C. 210, 214, 428 S.E.2d 498, 500 (Ct. App. 1993)). "[T]he premeditated purpose and intent underlying a charge of lynching cannot be spontaneous." *Id.* at 137, 572 S.E.2d at 475.

At the close of the State's case, Larmand moved for a directed verdict on the charge of lynching, arguing there was no premeditation under the circumstances of this case. The State argued it presented the following evidence of premeditation: Larmand and Lemire drove together to Lochbaum's house; at midnight; were uninvited; parked down the street from Lochbaum's house; wore dark clothing[6];

---

[4] This section was repealed in 2010 by 2010 Act No. 273, § 5, eff. June 2, 2010.

[5] This section also was repealed by 2010 Act No. 273, § 5.

[6] Larmand and Lemire were both wearing dark clothing. Larmand testified he was wearing dark clothing because he works on vehicles, and Lemire testified he usually wears all black.

and separately approached Lochbaum's house on foot with Lemire carrying a loaded gun pointed at Lochbaum. The court denied Larmand's motion, finding it was an issue for the jury.

Larmand testified he told Lemire to stay in the vehicle while he went to talk to Lochbaum, and he was not aware that Lemire had a gun with him at the time. He stated he was walking back to his vehicle when he heard Lemire yell at Lochbaum. Lemire testified Larmand instructed him to stay in the vehicle, did not ask him to bring a gun, did not know he had a gun with him, and did not ask him to pull a gun on Lochbaum or harm him in any way. Lemire further testified he got out of the vehicle when he heard someone yelling, and he wanted to make sure Larmand was not in any danger. Additionally, none of the State's witnesses testified they saw any signs of any premeditated intent between Larmand and Lemire to harm Lochbaum.

While we note the State may demonstrate the intent element in a lynching case through testimonial evidence or circumstantial inferences, viewing the evidence and all reasonable inferences in the light most favorable to the State, we find the record devoid of any evidence, direct or circumstantial, tending to prove Larmand and Lemire acted with the premeditated purpose and intent required to sustain a conviction. *See Smith*, 352 S.C. at 138-39, 572 S.E.2d at 476 (finding the record devoid of any evidence, direct or circumstantial, tending to prove the co-defendants acted with the premeditated purpose and intent required to sustain a conviction and reversing Smith's conviction for second-degree lynching); *see also State v. Hernandez*, 382 S.C. 620, 625-26, 677 S.E.2d 603, 605-06 (2009) (determining the State failed to present any evidence such as acts, declarations, or specific conduct to support the inference that the petitioners had knowledge of the contents of the tractor-trailer; therefore, the conclusion that the petitioners had knowledge of the drugs in the tractor trailer was mere speculation, and the trial court erred in denying the motion for a directed verdict); *State v. Arnold*, 361 S.C. 386, 390, 605 S.E.2d 529, 531 (2004) (holding the trial court should grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty). Therefore, we find the trial court erred in denying Larmand's motion for directed verdict as to the charge of lynching.

II. Conspiracy

Larmand argues the trial court erred in not directing a verdict on the charge of conspiracy because the State failed to prove any facts that would reasonably support an agreement between himself and Lemire to inflict an act of violence upon Lochbaum or point a firearm at Lochbaum. We agree.

Section 16-17-410 of the South Carolina Code defines conspiracy as "a combination between two or more persons for the purpose of accomplishing an unlawful object or lawful object by unlawful means." S.C. Code Ann. § 16-17-410 (2003). In *State v. Fleming*, 243 S.C. 265, 274, 133 S.E.2d 800, 805 (1963) (citations omitted), the South Carolina Supreme Court explained conspiracy:

> It need not be shown that either the object or the means agreed upon is an indictable offense in order to establish a criminal conspiracy. It is sufficient if the one or the other is unlawful. Nor need a formal or express agreement be established. A tacit, mutual understanding, resulting in the willful and intentional adoption of a common design by two or more persons is sufficient, provided the common purpose is to do an unlawful act either as a means or an end. Although the offense of conspiracy may be complete without proof of overt acts, such "acts may nevertheless be shown, since from them an inference may be drawn as to the existence and object of the conspiracy. It sometimes happens that the conspiracy can be proved in no other way." "To establish sufficiently the existence of the conspiracy, proof of an express agreement is not necessary, and direct evidence is not essential, but the conspiracy may be sufficiently shown by circumstantial evidence and the conduct of the parties. The circumstantial evidence and the conduct of the parties may consist of concert of action."

"Under South Carolina law, no overt acts need be shown to establish a conspiracy. The crime consists of the agreement or mutual understanding." *State v. Horne*, 324

S.C. 372, 381, 478 S.E.2d 289, 294 (Ct. App. 1996). "Once a conspiracy has been established, evidence establishing beyond a reasonable doubt the connection of a defendant to the conspiracy, even though the connection is slight, is sufficient to convict him with knowing participation in the conspiracy." *Id.* at 382, 478 S.E.2d at 294. "[T]he acts and declarations of any conspirator made during the conspiracy and in furtherance thereof are deemed to be the acts and declarations of every other conspirator and are admissible against all." *Id.* (quoting *State v. Sullivan*, 277 S.C. 35, 42, 282 S.E.2d 838, 842 (1981)).

At trial, Larmand moved for a directed verdict, arguing there was no evidence he conspired in any way with Lemire to harm Lochbaum, bring the gun, or brandish the gun. The State asserted it presented evidence of conspiracy, which was the same evidence it argued met the premeditation requirement for the lynching charge. The court denied Larmand's motion, finding the acts and declarations of any conspirator in conspiracy and in furtherance thereof are deemed to be acts and declarations of every other conspirator and are admissible in full.

Larmand and Lemire both testified they did not conspire to attack Lochbaum, and the State presented no evidence of an agreement between the two. The only evidence the State presented was Larmand and Lemire arrived at the same place together. We find no evidence was presented from which the jury could infer Larmand and Lemire had a common agreement and understanding to injure Lochbaum or point a firearm at Lochbaum; therefore, the trial court erred in denying Larmand's motion for a directed verdict.

III. Pointing and Presenting a Firearm

Larmand argues the trial court erred in not directing a verdict on the charge of pointing and presenting a firearm because the State failed to prove a conspiracy between Larmand and Lemire or present any evidence sufficient to convict Larmand of pointing and presenting a firearm. We agree.

It is undisputed that Larmand never had possession of the gun. The trial court denied Larmand's motion for directed verdict because Lemire had the gun, and the acts of a conspirator in conspiracy are deemed to be acts of every other conspirator. Because we find the trial court erred in denying Larmand's motion for a directed verdict as to the conspiracy charge, we also find the trial court erred in denying his motion for a directed verdict as to the charge of pointing and presenting a firearm.

CONCLUSION

We find the trial court erred in not directing a verdict as to Larmand's charges of lynching, conspiracy, and pointing and presenting a firearm. We decline to address Larmand's remaining arguments because these issues are dispositive of the appeal. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not address remaining issues when its determination of another issue is dispositive of the appeal).

Accordingly, Larmand's convictions for second-degree lynching, conspiracy, and pointing and presenting a firearm are

REVERSED.

FEW, C.J., and HUFF, SHORT, WILLIAMS, THOMAS, PIEPER, KONDUROS, GEATHERS, and LOCKEMY, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Susan Davis, Employee, Respondent,

v.

UniHealth Post Acute Care, Employer, and Phoenix Insurance Company/Travelers Insurance Company, Carrier, Appellants.

Appellate Case No. 2011-197634

Appeal From The Workers' Compensation Commission

Opinion No. 5098
Heard December 12, 2012 – Filed March 13, 2013

AFFIRMED

R. Daniel Addison, Hedrick Gardner Kincheloe & Garofalo, of Columbia, for Appellants.

Michael J. O'Sullivan, Richardson Plowden & Robinson, PA, of Columbia, and Aynsley Rogers, Mickle & Bass, LLC, of Rock Hill, for Respondent.

FEW, C.J.: UniHealth Post Acute Care and its workers' compensation insurance carrier appeal the workers' compensation commission's decision awarding Susan Davis temporary total disability compensation.[1] UniHealth argues the commission

[1] We refer to the appellants collectively as UniHealth.

erred when it (1) determined Davis did not constructively refuse suitable employment; and (2) reinstated temporary compensation that UniHealth had previously agreed to pay. We affirm.

I. Facts and Procedural History

Davis worked as a certified nursing assistant at a UniHealth nursing home. In October 2008, Davis injured her lower back at work. UniHealth acknowledged the injury was compensable and provided her medical treatment. In October 2009, UniHealth assigned Davis to light duty employment in the laundry room to accommodate work restrictions imposed by her physicians. Davis and UniHealth consented to an order under which UniHealth voluntarily began paying Davis temporary partial disability compensation on October 13, 2009.

Davis's job in the laundry room consisted of folding and hanging clothes. Her shift ran from 6:00 a.m. until 2:00 p.m. She and other workers would take only one break—from 7:20 until 7:35—while the laundry was in the washing machines.

On the night of April 4, 2010, Davis slept only an hour or two due to back pain and a stomach virus. She continued having back pain the following morning, and she took a muscle relaxer fifteen minutes before her shift began. She typically did not take muscle relaxers before work because they made her feel sleepy. At 7:35 a.m., Davis's supervisor saw her sitting in a chair with her eyes closed. He observed Davis for approximately twenty-five seconds and heard her snore several times. He concluded she was sleeping and reported what he saw. The next day, UniHealth fired Davis for sleeping on the job. UniHealth's policy is that sleeping on the job is cause for immediate termination of employment.

UniHealth stopped paying temporary partial disability compensation on the basis that by sleeping at work, Davis constructively refused the light duty employment UniHealth provided her. Davis filed a claim for temporary total disability compensation. After a hearing, a single commissioner found that Davis had fallen asleep at work for a period of twenty to sixty seconds. The commissioner found, however, that Davis did not refuse employment by falling asleep under these circumstances. Therefore, the commissioner concluded Davis was entitled to have her temporary compensation reinstated. Because UniHealth was no longer providing her alternative employment, the commissioner ordered UniHealth to pay Davis temporary total disability compensation from the date UniHealth fired her

"through the present and continuing . . . until terminated in accordance with the applicable law." An appellate panel affirmed.

II. Constructive Refusal of Employment

UniHealth argues the commission erred in finding Davis did not constructively refuse employment. UniHealth contends the concept of constructive refusal arises under section 42-9-190 of the South Carolina Code (1985), which provides, "If an injured employee refuses employment procured for him suitable to his capacity and approved by the Commission he shall not be entitled to any compensation at any time during the continuance of such refusal." The commission found that Davis's

> sleeping for one minute or less, whether on a morning break or not, does not rise to the level of constructive refusal of employment. This is particularly true given Ms. Davis' difficulty sleeping on the night of April 4, 2010 was partially due to pain in her low back, a compensable body part.

We question whether section 42-9-190 allows an employer to deny an employee temporary disability compensation for *constructively* refusing employment. *See Johnson v. Rent-A-Ctr., Inc.*, 398 S.C. 595, 603, 730 S.E.2d 857, 861 (2012) (stating there is "no precedent . . . that a constructive refusal of light duty could defeat a claim for temporary total disability"). Even if it does, we disagree with UniHealth's argument. The question of whether an employee refused employment under section 42-9-190, whether constructive or not, is a question of fact for the commission to decide. We find substantial evidence to support the commission's finding.

Davis testified that on the night of April 4, 2010, she slept only one or two hours due to back pain and a stomach virus. She also testified she took a muscle relaxer before work to alleviate back pain, and she did not typically take muscle relaxers before work because they made her feel sleepy. Finally, Davis testified her break lasted until 7:35, which is when her supervisor saw her asleep. This evidence shows that Davis fell asleep due to a combination of exhaustion and medication, or that she took a nap while on break. It does not show that her sleeping amounts to a refusal to work. We affirm the commission's finding that Davis did not refuse employment.

III. Temporary Total Disability Compensation

UniHealth argues the commission erred in ordering it to pay Davis temporary total disability compensation. UniHealth contends neither the evidence in the record nor the commission's findings of fact support a conclusion that Davis is disabled. In making this argument, UniHealth asks us to ignore the fact that it voluntarily agreed Davis was disabled and signed a consent order requiring that UniHealth pay Davis disability compensation. When UniHealth fired her, the only question brought before the commission was whether she refused employment by sleeping. If the commission had found she did, she would not have been entitled to any compensation. § 42-9-190. When the commission found she did not refuse employment, however, she retained the status UniHealth agreed to in the consent order—a disabled employee entitled to compensation. While UniHealth was providing Davis light duty employment, it was able to pay her partial compensation instead of total. After UniHealth terminated that employment, its own agreement that she was disabled and its refusal to provide alternative employment required UniHealth to pay her temporary total compensation until the payments could be properly terminated. The necessary consequence of the commission's finding that Davis did not refuse employment, therefore, combined with UniHealth's agreement she was disabled and its refusal to provide her employment, was that UniHealth was obligated to provide total disability compensation. The commission simply imposed this necessary consequence, which continues until the commission allows UniHealth to terminate compensation. *See* S.C. Code Ann. § 42-9-260(F) (Supp. 2012) (requiring the commission to adopt regulations for terminating compensation that "provide for an evidentiary hearing and commission approval prior to termination" except in circumstances not present here); 8 S.C. Code Ann. Regs. 67-506 (2012) (providing procedures for termination more than 150 days after the injury is reported); *see also Grayson v. Carter Rhoad Furniture*, 317 S.C. 306, 310, 454 S.E.2d 320, 322 (1995) (holding former employee whose work restrictions were never lifted remained temporarily disabled under Regulation 67-504 and was entitled to have temporary total disability compensation reinstated); *Cranford v. Hutchinson Constr.*, 399 S.C. 65, 76, 731 S.E.2d 303, 309 (Ct. App. 2012) (reversing commission for denying temporary total disability compensation to employee fired from light duty employment during period of disability).

The panel ordered UniHealth to pay temporary total disability compensation "until terminated in accordance with the applicable law." If Davis is not disabled, it is incumbent upon UniHealth to institute termination proceedings and argue that point to the commission.

IV. The Commission's Order on Davis's Motion for Sanctions

When UniHealth fired Davis, it terminated the temporary partial disability compensation it had begun paying voluntarily in October 2009. Davis made a motion for sanctions. In an interlocutory order dated July 30, 2010, a single commissioner determined UniHealth terminated compensation without following the commission's procedures for doing so. The commissioner's order reinstated Davis's temporary partial disability compensation "until the Commission determines otherwise or by agreement of the parties." The commissioner issued the order before the commission ruled Davis did not refuse employment. An appellate panel affirmed the July 30 order on April 18, 2011.

UniHealth argues that because Davis never appealed the April 18 order, it was the law of the case, and therefore it prevented the commission from later finding Davis was entitled to temporary total disability compensation. However, because the order was not a final decision of the commission, it was not an appealable order. *See* S.C. Code Ann. § 1-23-380 (Supp. 2012) (limiting appellate review to "a final decision" of an agency). The only question decided in the order was whether UniHealth should be penalized for terminating Davis's temporary partial disability compensation without following required procedures. The order did not address whether Davis was entitled to total compensation, as opposed to partial compensation. Moreover, the order expressly reserved to the commission the power to reach a different conclusion later. Finally, UniHealth *did* appeal the April 18 order. This court dismissed the appeal, finding the order was not final, and therefore unappealable. UniHealth did not appeal *that* order.

V. Conclusion

The decision of the workers' compensation commission is **AFFIRMED**.

WILLIAMS and PIEPER, JJ., concur.