STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable J. Derham Cole, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

Respondent,

vs.

ROBERT TYRELL GENTRY,

Appellant.

Appellate Case No. 2021-000692

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

I.

Sufficient evidence of intent and knowledge was presented for the jury to find Appellant guilty of accessory before the fact to murder because Appellant provided his codefendant with a firearm under circumstances manifesting a wanton disregard for life.

II.

Sufficient evidence supports the verdict for accessory after the fact because evidence shows that Appellant assisted in the disposition of the murder weapon, which belonged to Appellant, and Appellant was aware of the murder when he assisted the principal.

STATEMENT OF THE CASE

The grand jury indicted Appellant Gentry for accessory before the fact and accessory after the fact to murder. Gentry was tried with his codefendant, Tremaine Pierre Johnson, on June 14-17, 2021, and the jury convicted Gentry as charged. Co-defendant Johnson was found guilty as charged of murder. Judge Cole sentenced Gentry to concurrent terms of thirty years' imprisonment for accessory before the fact and fifteen years' imprisonment for accessory after the fact.

STATEMENT OF FACTS

Codefendant Johnson killed the woman he impregnated, Brechue Ferrarri Wiles (Victim). Victim was excited upon learning she was pregnant on May 1. On the other hand, Johnson was not happy, as indicated by his abortion-related internet searches. Social media and cell phone records tracked Johnson's arguments with Victim, his internet searches for modes of poisoning Victim, and his rendezvous with Victim at the park she would never leave. Gentry's contact with Johnson in the

course of two days and their movements shown in cell tower records provided substantial evidence Gentry provided the murder weapon to Johnson and in turn, assisted Johnson in hiding the murder weapon.

The spent ammunition, TulAmmo, bore rifling marks that are left only from being fired by a Smith &Wesson firearm. Gentry's gun, a 40 caliber Smith & Wesson gun, was never recovered. Gentry and Johnson remained in constant contact from the beginning of the day that was Victim's last and during the next day, when the disposition of Gentry's weapon became paramount to both of them.

Louis Dischler took a morning walk in Duncan Park on May 11, 2018. He saw a shoe on the trail and then its mate. Then he saw the body, face down by the shore of the pond. He started back towards his house, but found a man on the trail who called 911 at his request. R. pp. 72-75.

Joann Littlejohn, Victim's great aunt, testified Victim recently discovered she was pregnant – Victim was excited and so was her mother. R. p. 77; p. 85. Littlejohn testified Victim and Fontae Wiles (Mother) were waiting in front of Littlejohn's house at about 8:00 p.m. on May 9. Victim and Mother wanted to show her an outfit Mother planned to wear for Littlejohn's sixtieth birthday party. Victim, engaged in a loud telephone conversation, sat on the hood of the car when Littlejohn arrived. Victim seemed anxious. She ended the phone call, and subsequently Victim asked Littlejohn to make her chicken quesadillas, a favorite meal. R. p. 175. Downstairs in the kitchen, Littlejohn heard a loud discussion between Mother and Victim, then Victim came downstairs, saying she was leaving to meet someone. Littlejohn did not even finish preparing the quesadillas Victim requested. Littlejohn rhetorically asked where she would go this time of night and added, "This is quite late for

a young lady to go out this time of night." R. pp. 79-80. Littlejohn ran out in a last attempt to stop Victim, but she drove away. R. p. 81.

Littlejohn testified Victim's mother called Victim twice, Littlejohn heard the second phone conversation on speaker phone. Mother implored Victim to come home, Victim said I am coming. Littlejohn heard a male voice in the background say, "Come on, we gotta go," shortly before Victim hung up. R. pp. 81-82. The next day Littlejohn helped Mother try to find Victim. R. pp. 82-84.

Fontae Wiles (Mother), testified after they arrived at the house and went inside, Victim received two phone calls for her to meet the caller at the park by the water. R. pp. 89-91. Specifically, Mother testified as follows:

> Q: And where did you and Bree go?
>
> A: Upstairs.
>
> Q: And did Bree get a phone call?
>
> A: Yeah.
>
> Q: Was it unusual or what was – what was different about that call? Did she recognize the number or anything?
>
> A: No. She didn't.
>
> Q: Okay. But did she answer it?
>
> A: Yes.
>
> Q: And when she answered it, what was her reaction?
>
> A: She was upset but she answered the telephone. She answered the phone, and he was telling her to meet . . . by the park, by the water.
>
> Q: [A]fter that phone call did – did she get another phone call?

A: Yeah.

Q: And was it the same person?

A: Yeah.

Q: And where did – she decide to do after that second call?

A: Leave to go meet at the park by the water.

R. p. 89, line 18 – p. 90, line 13. Mother told Victim not to go, but Victim left. After Victim left the house, Mother called Victim twice, and testified that in the second phone call, she heard a male voice in the background. R. pp. 91-92.

The next day, when she did not receive her usual noontime phone call from Victim, Mother's concerns rose further. She looked for Victim after work. Mother went to Johnson's house and spoke to his mother, who called Johnson. His mother's eyes got big as she spoke with her son, Johnson. She put Johnson on speaker phone. When Johnson claimed to have not seen Victim since Tuesday, Mother replied that was not true, Victim saw him Wednesday night. He stuttered in response and Mother told him she was going to the sheriff's office. R. pp. 92-95. Mother was at the police station filing a missing person's report on May 11 when she learned her daughter's body was discovered. R. p. 96. Mother identified Victim's purse that was left in Victim's car. The car was left in the park's parking lot. R. p. 97; p. 103.

Officer William Joseph Tillinghast, the K-9 handler, testified his dog tracked from Victim's vehicle, to a set of car keys, to a shoe, and then within five yards of the body. R. pp. 110-12.

Supervising officers informed Officer Shane Michael Cloran of an unidentified female floating in Duncan Park Lake and he met investigators at the lake. R. p. 120, lines 7-13. Officer

Cloran followed the canine tracking team as it made its way to the deceased. Next, he flagged and photographed items of evidence along the trail, including two shoes, a set of keys, shell casings, and blood located by the shore. R. pp. 126-27. During the autopsy, Victim was determined to be pregnant and her fetus was removed from the body. R. p. 138. A dive team was brought in to search the lake, the divers swept their hands through debris. Metal detectors were employed in the shallow portions of the lake. R. pp. 116-17.

A TulAmmo 40 caliber casing lay near where one of the shoes was found. R. pp. 128-30. Law enforcement later searched Gentry's vehicle and found a box of 40 caliber TulAmmo, another empty box of 40 caliber TulAmmo, and also a 40 caliber pistol magazine in the glove box. R. pp. 182-83. In Gentry's house, law enforcement found a half empty box of the same ammunition and an empty box for a Smith and Wesson hand gun that showed the caliber of the hand gun and its serial number. R. p. 183; p. 186. A custodian from Academy Sports verified Gentry bought a Smith and Wesson 40 caliber pistol on March 20, 2017. R. pp. 332-33; p. 336.

State's Exhibit 21, a summary of cell phone records, text messages, and internet searches collected in the case, shows the progression of the disagreements between Johnson and Victim, until the fatal outcome on the night of May 9, at the park, a mere nine days after Victim determined she was pregnant. It also documents Gentry's coordination with Johnson in the hours before and the day after the murder. The chronology in State's 21 is discussed below:

May 1: Victim thinks she is pregnant, does not like Johnson's reaction.

On May 1, at around 5:00 a.m., Victim sent a text to Johnson telling him, "I calculated my period." R. p. 198. This led to a discussion in which Johnson said Victim could take a pregnancy

test the next day. R. pp. 199-200. The disagreement starts brewing when Victim texts at 10:18, "Hey. I don't like how you've been acting towards me. I didn't do anything wrong, and I just feel since you treat me like a random bitch I don't feel a need for us to talk anymore." R. p. 200, lines 12-16. A series of texts between them led to Victim remonstrating, "By your actions. Your actions are making me feel unwanted and uncared for." R. p. 201, lines 17-19. Another text from Victim informs Johnson, "You're a good talker with no game. You only make time for who you want and I'm definitely not that person. I understand we both busy and everything, but I'm not going to sit here and let you ignore me like that." R. p. 202, lines 1-4.

May 2: Johnson wants Victim to have an abortion, Victim disagrees, Johnson researches the poisonous qualities of a harvestman (an arachnid known as a daddy long-legs).

It becomes clear Johnson and Victim carried diametrically opposed views of her pregnancy: At 12:36 p.m., Johnson searched "abortion clinic" on his phone, but obviously picking up a prior conversation, at 10:56 p.m. Victim texted, "What if your ma aborted you?" R. p. 203; p. 204, lines 16-19; State's 21. He responded he just would not be here. She responded, at 11:00 p.m., "S.M.H. [shaking my head], there's no talking to you." R. pp. 204-05; State's 21. At 11:02 p.m. Johnson conducted an internet search: "Is the poisonous in a granddaddy long leg?" R. p. 205, lines 3-14; State's 21.

May 3: Johnson researches abortion methods, after Victim tells Johnson the due date for the baby, Johnson researches lethal poison for sale.

The next morning, May 3, Johnson undertook a new round of internet searches around 5:00 a.m. including: "What can you take to get rid of a baby in your stomach?" R. p. 205, line 20-21. He

searched for Mifeprex, an abortion pill, and examined whether it was for sale on EBay. R. p. 205, line 20 – p. 206, line 7; State's 21.[1] At 11:43 a.m., Victim texted, "Just to give you info. I am a month and a week. The baby's due date is on or before or after Jan. 5th. Just felt like you need to know even if you don't care right now. Have a blessed day." R. p. 206, line 15-22.

Later in the evening, Johnson conducts the following searches: "Poison" "Types of poison." "Poison Ivy" "Poison that can kill you for sale." R. p. 207, lines 3-8. Johnson then initiated a text discussion with Victim, who tells Johnson, "I actually want us to be able to sit down and talk about ways we can cope." R. p. 207, lines 9-25. A further exchange of communication suggests an attempt to reconcile, leading to Victim informing Johnson, "Not tomorrow though. It'll have to be Saturday." R. pp. 207-09.

May 5: Victim is excited about the baby, Johnson plays along.

The next day sees little contact between them, while May 5 shows a friendly conversation about a diaper disposal pail Victim's mother bought for her. R. pp. 209-10. Victim sent a picture of her stomach, commenting she had a "little pudge." R. p. 210, line 25 – p. 211, line 7.

May 8: Victim anxious about telling Johnson's mother, but the visit ends with argument between Johnson and Victim, and Victim blocks Johnson's phone.

On May 8, Victim and Johnson arrange by text for her to go over to his house. Johnson tells Victim he is helping his mother with something. At 10:31 p.m., Victim advises she is outside. R. pp. 211-12. At 10:46 p.m., Victim carries on a conversation with her cousin, telling her cousin she was scared to see "her." The cousin responds, "I know. But you can do it. She's a Christian

[1] Johnson was the father of the fetus. R. p. 313; p. 360. Obviously, his actions in the days leading up

mother." R. p. 212, line 23 – p. 213, line 5. Therefore, from the context, it appears she anticipated Johnson and Victim telling Johnson's mother the news of the pregnancy.

There is clearly an argument and the line of communication between Johnson and Victim concludes bitterly at 10:59 p.m. with Victim texting Johnson:

> You know what. Fuck you! I should have told you to your face. I'm not going to disrespect your mom like that. I don't need you in my child's life. Let me tell you one thing now. . . . [D]on't try to come back! You said what you said, ...

R. p. 213, lines 6-21. Victim's next text told Johnson he was blocked, and she actually blocked his number. R. p. 213, line 16 – p. 214, line 2. Johnson does not respond that night.

May 9: Johnson finds out Victim blocked Johnson and sends an angry reply, then contacts Gentry for the first time within the hour – Gentry and Johnson repeatedly communicate for the next couple of days. Victim goes to the park, Johnson's phone uses the same cell tower, Victim never leaves the park.

Johnson did not read Victim's last two messages until the next morning, but responded at 7:28 a.m., "Shut up. Ain't nobody outta the child's life. I didn't have nothing else to say." R. p. 214, lines 3-13. After taking sufficient time to stew, Johnson contacted Gentry by Facebook Messenger at 8:17 a.m. This is the first time starting from April 5 that the records show Gentry and Johnson are in contact, but as will be shown, they repeatedly engaged in contact straddling both the time before and after Victim's death. Gentry responded with two messages, the second response to Johnson is as follows: "At work. ill [I'll] call u in bout 10 min den gank." R. p. 214, line 17 – p. 216, line 4; State's Exhibit 21 (p. 11) Reece explained "den gank" means gangster or gang. R. p.

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to Victim's death indicate he thought he was the father.

216, lines 3-6. They carry on a one minute, twenty-five second conversation at 9:11 a.m. Gentry deleted the call from his phone. R. p. 216, lines 7-15; State's 21 (p. 11).

Caprice Alo, Gentry's ex-girlfriend and mother of his child, lived with Gentry and his mother at the time. Johnson came by their house on May 9 at about four or five p.m. Gentry met Johnson at Johnson's vehicle. Johnson was there for less than five minutes. R. pp. 324-27.

Gentry texts Johnson at 7:37 p.m., "Im in da city." Gentry deletes this text. R. p. 217, line 23 – p. 218, line 11; State's 21, (bottom of p. 13). Gentry sends a message to Johnson at 8:08 p.m., "Just hmu (hit me up) wen u dun[2] im playin wit my lil gurl." R. p. 218, line 19-25; State's 21, (p. 14). Gentry deleted a subsequent video call. R. p. 219, lines 1-10. **Cell phone records establish Gentry's and Johnson's phones were using the same cell tower in the vicinity of Gentry's Hydrick Street address at 8:24 p.m. on May 9 and connecting with each other.** R. p. 296; p.547. At 8:36, Johnson sends a message, "Need to holler at you wya." R. p. 219, lines 14-17; State's 21 (p. 14).

Johnson then calls Daniel Hines, who in turn calls Victim. The call connects for just shy of seven minutes. R. p. 219, line 18 – p. 220, line 4; State's 21 (p. 14). This results in Victim unblocking Johnson and calling him for a minute and a half conversation at 9:31 p.m. R. p. 220, lines 5-13; State's 21 (p. 14). Victim's mother calls her at 9:49 p.m. for twelve seconds, followed by her second call to Victim at 9:59 p.m. lasting a minute and twenty-one seconds. R. p. 220, lines 5-18; State's 21 (p. 14). This is the phone call from Mother begging Victim to come home.

At 10:17 p.m., Johnson texts Gentry, asking what he is doing, and Gentry responds, "None.

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[2] "wen u dun" connotes Gentry's awareness about Johnson's plans.

I'm in the vil. What's up?" Gentry deletes this message. R. p. 220, line 23 – p. 221, line 11; State's 21 (p. 14). Mother tries to call Victim twice at 11:23 and 11:24 p.m., then texts Victim asking her to call Mother. Mother tries a couple more times and sends an i-message asking her to call. R. pp. 221-22; State's 21 (p. 14). Meanwhile, Johnson tries to call Gentry at 11:45 p.m. R. p. 222; State's 21 (p. 14). At 10:16 p.m. and later at 11:45 p.m., Johnson's phone is utilizing the same cell tower Victim is utilizing at 11:23, 11:25, and 11:27 p.m. R. pp. 297-98; p. 550 (State's Exhibit 23.1 (p. 10)).

Sidney Dean calls Johnson at 11:48 p.m. and they speak for ten minutes. R. p. 223, lines 2-5; State's 21 (p. 14). Dean testified at trial that when she spoke with Johnson, he was in a car and he seemed out of it during the conversation. R. pp. 320-21. The historical cell site analysis records show Johnson moving away from the vicinity of Duncan Park at this time. R. 550 (State's Exhibit 23.1 (p. 10)). Victim's phone never leaves the area. R. p. 300. According to the theory of the State's case, Johnson is leaving Victim behind, her body dumped in the water.

Johnson told police the last time he saw Victim was Tuesday, not Wednesday as the cell tower records suggest. Johnson told law enforcement he was home all day except for a trip to the gym earlier in the day. R. p. 312; State's Exhibit 25 (23:00-24:15).

May 10: Johnson meets Gentry at work. Gentry researches both selling a gun and reporting a stolen gun. Johnson sends a message for Gentry to "do it today" and say it "happened two days ago."

The next morning, 7:17 a.m., Gentry sends an i-Message, "All right. I'm up. About to head to work." Gentry deleted the message. R. p. 223, lines 14-22. Then Gentry starts a series of

searches: "It's cheaper than dirt." "Cheap guns." "Bulk ammo." "Guns, parts and accessories." and "Cheaper than dirt." Reese explained "Cheaper than Dirt" is a website for purchasing weapons. Later, mid-morning, Johnson messages Gentry asking where he works. Gentry responds "A.F.L. in Duncan. What's up?" **Johnson's response, "Nothing. Had something to ask you. I was gonna pull up on if you could step out for a second."** Gentry deletes his response, "Shit what's up." Meanwhile, Johnson does an internet search for "afl in duncan." R. pp. 224-25; State's 21 (pp. 14-15). Gentry also deleted the 11:31 a.m. message telling Johnson he is on break and Johnson deletes the sixteen second phone call from Johnson to Gentry at 11:45 a.m. R. p. 226. **At 12:41, Gentry started another series of firearm related searches, the first search was "Sell items cheaper than dirt."** Others are related to Smith and Wesson products. Another search is "my pistol was stolen." R. p. 226, line 21 – p. 227, line 23; State's 21 (pp. 14-15). Gentry undertook several more searches, including one that indicates only eleven states require gun owners to report stolen weapons to police. R. pp. 227-28; State's 21 (p. 15).

These last searches were around 2 p.m. At 2:56 p.m., still May 10, Johnson sends this message: **"Do it today, Fam! Happened two days ago."** The response a few minutes later from Gentry is "Iat." R. p. 228, lines 3-22; State's 21 (p. 15). Gentry deletes that message, but a few minutes later he does another search, "Report firearm. Theft or loss. Alcohol, tobacco, firearms and explosives." R. p. 229, lines 2-5; State's 21 (p. 15). Devin Teague, Gentry's coworker at A.F.L., testified on May 10, Gentry asked Teague how to report a gun missing. R. pp. 338-39.

Gentry messages Johnson at 7:49 p.m., "Bet we going to talk later long as you straight." Johnson responded, asking him if he worked tomorrow. When Gentry advises he only is working

until noon, Johnson responds, "We'll get up" and Gentry responds "Bet." Gentry deletes these messages. R. pp. 230-31. Then Johnson sends a text to Victim at around 12:39 a.m. asking if she is okay. Victim does not respond. R. p. 231, lines 6-11. At the same time, he calls and speaks with Gentry for twenty-six seconds. R. p. 231, lines 14-20. They speak again for eighteen seconds at 1:17 a.m.; State's 21 (p. 15).

May 11: Gentry searches for stories on Victim's death at Duncan Park.

Gentry starts four searches at Goupstate, including photographs of the death investigation at Duncan Park. R. pp. 232-33; State's 21 (pp. 15-16). At 9:22 p.m., Gentry searches "woman's body found in Duncan Park Lake." R. p. 234. Another is "body found in Duncan Park Lake was pregnant woman." R. p. 235, lines 1-3 State's 21 (p. 16).

The bullet and casing found at the murder scene were consistent with each other. The bullet was a 40 caliber bullet and the markings on the bullet was consistent with being fired by a Smith and Wesson pistol. Smith and Wesson was the only known manufacturer that would leave those markings on the 40 caliber bullet. R. pp. 343-49. DNA analysis determined Victim's blood was on the keys found at the park. R. p. 361.

Dr. Wren, the forensic pathologist, performed the autopsy on the Victim and noted Victim was in the water for a while and observed some facial features were destroyed by animal activity which left exposed bone and teeth. R. p. 373. Rigor mortis had not set in so Victim was not dead for longer than 48 hours. Dr. Wren observed two lacerations that were not pre-mortem and suggested they were incurred when the body was put in the lake. R. p. 374. Dr. Wren noted that Victim's false, glittered nails were not splintered and it did not appear Victim was involved in a struggle with

the shooter. R. p. 375. Because the lungs were well-aerated, Victim probably died quickly. R. pp. 377-78. Dr. Wren testified a gunshot wound through the right side of Victim's brain and possible powder residue was consistent with being shot in the back of the head. The gunshot was close range, but not a contact wound. R. pp. 382-83; pp. 386-87.

ARGUMENT

I.

Sufficient evidence of intent and knowledge was presented for the jury to find Appellant guilty of accessory before the fact to murder because Appellant provided his codefendant with a firearm under circumstances manifesting a wanton disregard for life.

When considering a motion for directed verdict, the trial court is concerned with the existence of evidence, not its weight. State v. Walker, 349 S.C. 49, 53, 562 S.E.2d 313, 315 (2002). In reviewing the denial of a motion for a directed verdict, the reviewing court must view the evidence in the light most favorable to the State. Id. Ultimately, the question is whether, in view of the evidence in the light most favorable to the State, a rational trier of fact could find all the elements beyond a reasonable doubt. State v. Robinson, 310 S.C. 535, 539, 426 S.E.2d 317, 318 (1992) (finding any rational trier of fact could have found all the elements of the crime beyond a reasonable doubt in affirming the denial of a motion for directed verdict and citing Jackson v. Virginia, 443 U.S. 307 (1979)). The task of the trial court is to simply determine "whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." State v. Bennett, 415 S.C. 232, 781 S.E.2d 352 (2016). The reviewing court should affirm if in viewing the evidence in the light most favorable to the State, "the evidence could induce a reasonable juror to find [the defendant] guilty." See State v. Pearson, 415 S.C. 463, 474, 783 S.E.2d 802, 808 (2016).

The United States Supreme Court noted the following:

> [T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. . . . This familiar standard gives full play to the responsibility

> of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.

Pearson, 415 S.C. at 471 n.2, 783 S.E.2d at 806 n.2 (quoting Jackson, at 319) (emphasis in the original); see also State v. Richburg, 250 S.C. 451, 459, 158 S.E.2d 769, 772 (1968) ("When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury.").

Gentry posits the case as a circumstantial evidence case and then seeks to differentiate circumstantial evidence from direct evidence. The United States Supreme Court made the following observation concerning circumstantial evidence:

> Admittedly, circumstantial evidence may in some cases point to a wholly incorrect result. Yet this is equally true of testimonial evidence. In both instances, a jury is asked to weigh the chances that the evidence correctly points to guilt against the possibility of inaccuracy or ambiguous inference. In both, the jury must use its experience with people and events in weighing the probabilities. If the jury is convinced beyond a reasonable doubt, we can require no more.

Holland v. United States, 348 U.S. 121, 137-38 (1954) *cited with approval in* Jackson, at 317 n.9. Our Supreme Court articulated the following concerning the standard of review for purely circumstantial evidence cases:

> The trial court should grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty as suspicion implies a belief or opinion as to the guilt based upon facts or circumstances which do not amount to proof. On the other hand, a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.

State v. Hepburn, 406 S.C. 416, 753 S.E.2d 402, 409 (2013) (quoting State v. Cherry, 361 S.C. 588,

593, 606 S.E.2d 475, 478 (2004) (citations and internal quotations omitted)); see also State v. Richburg, at 459, 158 S.E.2d at 772 ("When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury.").

"This objective test is founded upon reasonableness[;] [a]ccordingly, in ruling on a directed verdict motion [when] the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." State v. Pearson, 415 S.C. 463, 473, 783 S.E.2d 802, 807 (2016) (quoting State v. Bennett, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016)).

Gentry seeks to define "substantial." North Carolina has defined "substantial evidence" as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." State v. Smith, 265 S.E.2d 164, 169 (N.C. 1980) which leads back to the pertinent question, as explained in Jackson, that the question in a directed verdict analysis is whether evidence is presented for any rational juror to find the defendant guilty beyond a reasonable doubt. Jackson, at 319.

"A conviction for the crime of accessory before the fact requires proof that the accused (1) either advised and agreed, urged, or in some way aided some other person to commit the offense; (2) was not present when the offense was committed; and (3) that some principal committed the offense." State v. Prince, 316 S.C. 57, 64, 447 S.E.2d 177, 181 (1993).

Circumstantial evidence establishes Gentry provided the gun and ammunition Johnson used to kill Victim. First, Gentry was found with 40 caliber TulAmmo and Gentry owned a Smith & Wesson weapon evidenced by the empty box found in his home. But his gun was never recovered. Victim was killed by a weapon firing 40 caliber TulAmmo and the markings could only have been

made by a Smith & Wesson. The evidence supports the inference that the day after the murder, Johnson is urging Gentry to report the gun stolen while Gentry seems to be deciding between alternative and incompatible courses of action of either (1) reporting his gun stolen or (2) selling his gun. A rational juror could conclude Gentry provided Johnson the murder weapon.

Gentry also argues that the State presented insufficient proof Gentry had sufficient knowledge of the purpose for which Gentry provided Johnson the weapon. In the present case, communications between Gentry and Johnson neatly straddle before and after the murder as if the murder was the centerpiece of their communication. Within the hour Johnson discovers Victim blocked his phone number – and shuttered him from involvement with her or the baby she carried – Johnson is in contact with Gentry. No prior contact in the cell phone records occurred in the time frame starting from April 5. Yet Victim goes missing and is likely shot by the end of the day. Johnson and Gentry are coordinating with each other throughout the day. They reference the need to talk, seek each other's locations, arrange meetings – but they carefully avoid discussing the substance of their conversation in any texts or messages. Gentry deletes most of his contacts with Johnson. They meet around four or five p.m. Their cell phones show another meeting at Gentry's residence at 8:24. At 9:30 p.m., Johnson manipulates Victim into unblocking his cell phone and Victim met Johnson soon after at Duncan Park. By 11:48, Johnson's phone shows he is moving away from the park, while Victim's phone never leaves the park. In the meantime, Johnson sends an i-Message at 10:24 p.m. to inquire where Gentry is, then Johnson attempts to call Gentry at 11:24 p.m., and once more at 11:45 p.m. in the closing minutes before he leaves the vicinity of where he murdered the Victim.

As demonstrated above, Gentry is integral to Johnson's plans: Johnson's attempts to contact

Gentry from the park when the murder just occurred demonstrates Gentry was more than a passive innocent agent in the murder scheme.

Gentry confirms this the next morning. Despite renewing contact with Johnson just the previous day, Gentry is compelled the next morning to let Johnson know he is going to work. Gentry deletes this seemingly innocuous message. The new found level of interest between the two codefendants is emphasized by the need for Johnson to ask Gentry where he works. Then he needs to meet Gentry at work, but without offering explanation why. They coordinate some more, but Gentry's gun-related searches sandwich the probable meeting time, and right after that meeting Gentry is alternatively deciding whether to sell the gun, as shown by his search for selling a gun on Cheaper than Dirt (which reflects possession) or report it stolen (which is inconsistent with possessing a gun to sell). When Johnson tells him to "Do it today, Fam! Happened two days ago," this is proof for the reasonable juror that Johnson was telling Gentry to report the weapon stolen two days ago – in other words, the day before the murder. The next day, on May 11, Gentry is making multiple searches to monitor news coverage about the discovery of Victim's body in the lake.

Gentry argues the State failed to prove intent, arguing the State is required to prove specific intent. In State v. Asfoor, 249 N.W.2d 529, 536 (Wis. 1977), the defendant argued he could not be convicted of negligent use of a weapon under an aider and abettor theory: "The essence of the . . . argument is that an aider and abettor cannot be guilty unless it is shown that the crime which was committed was the specific crime which the aider or abettor intended be committed." However, Asfoor knew of his codefendant's plans to commit "hostile damage" to the victim and provided the car and use of one of his guns. At the scene, he disarmed one of the two codefendants, but another

codefendant discharged the other weapon. Asfoor argued it was impossible to intend a negligent crime – the Court disagreed, observing Asfoor "consciously agreed to aid his companions when he knew they were planning a crime. He took overt actions to further their conduct. . . . All these intentional acts led to an injury when one of those he aided acted negligently while using a weapon. Asfoor . . . is responsible for the natural consequences of his acts." Id. at 537. The Wisconsin Supreme Court returned to a metaphor from its prior case law, explaining, "Asfoor was not 'sitting on the bench. He was in the game, playing a position or performing a function as to the commission of the crime." Id. at 536 (internal quotation marks and ellipses omitted).

In the present case, evidence establishes Gentry provided Johnson the murder weapon in a manner of communication intended to avoid the transfer of possession of the weapon from being detected or traced to either of them. These careful, furtive communications in the day leading up to the murder and the immediate day afterwards suggest Gentry was aware he was providing a weapon for violent crime. Semiautomatic handguns like a 40 caliber Smith & Wesson are designed to shoot things and more specifically people. The jury could believe Gentry was aware of the probable use of the weapon for a violent crime.

The Connecticut Supreme Court analyzed its accessory statute and found unlike "attempt or conspiratorial liability, accessorial liability does not require that a defendant act with the conscious objective to cause the result described by a statute." State v. Foster, 522 A.2d 277, 282 (Conn. 1987). In that case, Foster and a companion found and assaulted the victim who they believed raped Foster's girlfriend. Foster told the victim to stay and gave a knife to his companion and told him to stay with the victim and to not let him escape. His companion stabbed victim when victim charged

him, after Foster departed. Id. at 278-79.

The Court noted its prior decisions discussing the requirement of "dual intent," explaining those cases dealt with an accessory to a specific intent crime, and therefore, a specific intent to be an accessory was required. Id. at 282-83. The Connecticut Court explained under its case law, the proof of intent for an accessory is dependent on the mental state required for the substantive crime. Therefore, because the substantive offense required proof of recklessness, the prosecution only needed to prove recklessness for Foster's accessorial liability. Id. at 283.

The Connecticut court explained:

> Thus, accessorial liability is predicated upon the actor's state of mind at the time of his actions, and whether that state of mind is commensurate to the state of mind required for the commission of the offense. If a person, in intentionally aiding another, acts with the mental culpability required for the commission of a crime – be it "intentional" or "criminally negligent" – he is liable for the commission of that crime.

Id. at 283-84.

Murder is a general intent crime, and the level of proof is discussed in State v. Mouzon, 231 S.C. 655, 99 S.E.2d 672 (1957). In that case, Mouzon was driving, while intoxicated, through the Clarendon County village of Alcolu at 70 or 80 m.p.h. in a 35 m.p.h. zone and fatally struck a pedestrian. The Supreme Court upheld the murder verdict, explaining:

> We think the evidence was sufficient to sustain a verdict of murder. The conduct of the driver was such as to imperil human life. Although it may be fairly assumed there was no actual intent to kill or injure another, there is evidence of such recklessness and wantonness as to indicate a depravity of mind and disregard of human life, from which a jury could infer malice.

Id. at 662, 99 S.E.2d at 675. The Supreme Court further explained, "Malice does not necessarily

mean an actual intent to take human life. It may be inferential or implied, instead of positive, as when an act which imports danger to another is done so recklessly or wanton as to manifest depravity of mind and disregard of human life." Id. at 663, 99 S.E.2d at 676; see also State v. Meggett, 398 S.C. 516, 527, 728 S.E.2d 492, 498 (Ct. App. 2012) ("[W]hether a defendant possessed the requisite intent at the time the crime was committed is typically a question for jury determination because, without a statement of intent by the defendant, proof of intent must be determined by inferences from conduct."); State v. Tuckness, 257 S.C. 295, 299, 185 S.E.2d 607, 608 (1971) ("The intent with which an act is done denotes a state of mind and can be proved only by expressions or conduct considered in the light of the given circumstances. Intent is seldom susceptible to proof by direct evidence and must ordinarily be proven by circumstantial evidence, that is, by facts and circumstances from which intent may be inferred.").

In the instant case, the furtive conduct by both Gentry and Johnson to arrange the transfer of Gentry's .40 caliber Smith & Wesson to Johnson, with requisite TulAmmo ammunition, indicates knowledge and a reckless disregard for human life on Gentry's part because his conduct indicates he understood he was providing the weapon to Johnson for some illicit and dangerous purpose. The Supreme Court recognized in State v. Williams, 427 S.C. 246, 830 S.E.2d 904 (2019) the inherent dangers of firearms when it found Williams was precluded from a self-defense instruction to the jury because he knowingly brought a handgun to a drug deal. The Supreme Court found he brought on the difficulty and therefore a proposed jury instruction for self-defense was not supported by evidence. In reaching the holding, the Supreme Court noted the nexus between drugs and gun violence: "[I]ntentionally bringing a loaded, unlawfully possessed pistol to an illegal drug transaction

is 'calculated to produce a violent occasion.'" Id. at 251, 830 S.E.2d at 907.

In the instant case, the circumstances of how Gentry provided Johnson his Smith and Wesson weapon and the TulAmmo ammunition represents knowledge and reckless disregard for human life as it created a likelihood of loss of life. Therefore, evidence is sufficient to convict Gentry of accessory before the fact.

II.

Sufficient evidence supports the verdict for accessory after the fact because evidence shows that Appellant assisted in the disposition of the murder weapon, which belonged to Appellant, and Appellant was aware of the murder when he assisted the principal.

Gentry argues the trial court erred in declining to grant Gentry's motion for directed verdict for accessory after the fact because there was insufficient evidence he knew Johnson committed a murder and there was insufficient evidence he assisted Johnson after the fact.

To prove a defendant guilty of accessory after the fact, the State must prove the following elements: (1) a completed felony; (2) the accused knew the principal committed the felony; and (3) the accused harbored or assisted the principal felon. State v. Legette, 285 S.C. 465, 466, 330 S.E.2d 293, 294 (1985); State v. Blakely, 402 S.C. 650, 656, 742 S.E.2d 29, 32 (Ct. App. 2013). "The assistance or harboring rendered must be for the purpose of enabling the principal felon to escape detection or arrest." Legette, 285 S.C. at 467, 330 S.E.2d at 294. "An accessory after the fact is one who, knowing a felony to have been committed receives, relieves, comforts, or assists the felon." State v. Nicholson, 221 S.C. 399, 405, 70 S.E.2d 632, 634 (1952) (citation and internal quotation marks omitted). The person must know of the felony and know the person aided is the guilty party, and the accused must intend to shield the person aided from the law. Id.

The Kentucky Court of Appeals observed:

> Any assistance whatever given to a felon to hinder his being apprehended, tried, or suffering punishment makes the assistor an accessory. IV Blackstone 37. 'The true test for determining whether one is an accessory after the fact is, to consider whether what he did was done by way of personal help to his principal, with the view of enabling the principal to elude punishment – the kind of help

> rendered appearing to be unimportant.' Bishop's Criminal Law 365 (§634).

Maddox v. Commonwealth, 349 S.W.2d 686, 689 (Ky. Ct. App. 1960).

The Kentucky Court of Appeals observed, "Certainty of knowledge [a felony has been committed] is not required. It is sufficient that the accused had actual knowledge of facts which would give him good reason to believe the person assisted to be the felon." Id. at 688-89.

"[I]n determining whether a defendant had the requisite knowledge and intent to commit the crime of accessory, the jury may consider such factors as the defendant's possible presence at the crime or other means of knowledge of its commission, as well as his companionship and relationship with the principal before and after the offense." People v. Plengsangtip, 148 Cal.App.4th 825 (Cal. Ct. App. 4th District 2007)) (citation and internal quotation marks omitted). "Defendant's knowledge of the underlying offense may be proven entirely by circumstantial evidence." United States v. Lepanto, 817 F.2d 1463, 1467 (10th Cir. 1987).

In the instant case, there is no dispute as to whether there was a completed felony. Victim was shot in the park and found floating in the water on May 11. Johnson's motive and intent are well documented both in the texts and messages between him and Victim, and his internet searches for modes of poisoning Victim. Evidence established he met with Victim at the park that night where she was shot.

Further, Gentry's actions indicate he knew Johnson committed the felony. Gentry undertook numerous searches regarding the murder. Further, the internet searches indicate Gentry knew he needed to dispose of the weapon quickly and Johnson's message seeking for Gentry to report the weapon stolen the day before the murder occurred is further evidence of Gentry's knowledge. The

jury could infer that Gentry knew of the murder when he assisted Johnson in disposing of the weapon. See People v. Scott, 170 Cal.App.3d 267 (Cal. Ct. App. 1st Dist. 1985) (finding evidence supported Scott as an accessory after the fact to a completed bank robbery where evidence showed she agreed to give a ride to the robber and dropped him off near the bank and waited for his return – she claimed not to know he was going to commit a crime. She drove him away when he returned, and loose cash was found in and around her purse when her car was stopped by police); Jones v. United States, 716 A.2d 160 (D.C. Ct. App. 1998) (noting "[e]ven if joining Rice in his flight would not in itself be enough to render appellant an accessory after the fact, this action could be considered by the jury as further proof bearing upon the nature and purpose of any ambiguous action in the cut.").

In the instant case, sufficient evidence exists for a reasonable juror to believe Gentry provided assistance or harbored Johnson following the murder. Johnson attempted to contact Gentry no less than three times while he was at the park. Gentry clearly made himself available to Johnson, indicating he was going to work. Rather than communicate content to each other, Johnson makes a special trip to see Gentry at his workplace. Gentry's first internet search after the meeting was a search for selling a weapon on Cheaper than Dirt. This is evidence Gentry had possession of a weapon and he sought to dispose of the weapon. Alternatively, he considered reporting the weapon stolen, an action he ultimately did not undertake. There is sufficient evidence that Gentry disposed of the weapon or coordinated its disposition with Johnson. People v. Williams, 324 N.W.2d 70 (Mich. Ct. App. 1982) (finding evidence defendant secreted the weapon used by the principal was sufficient evidence to establish guilt as an accessory after the fact). Additionally, Gentry deleted

nearly every contact with Johnson which is an action reasonably calculated to (1) assist Johnson is hiding the transfer of the weapon to Johnson and (2) conceal their communications after the murder. United States v. Lepanto, 817 F.2d 1463, 1468 (10th Cir. 1987) (finding evidence the defendant disposed of a carpet in the dumpster containing evidence of his brother's bomb-making activities and defendant's expressions of a desire to dispose of evidence of bomb-making in the defendant's and his brother's apartment sufficient to support a verdict for accessory after the fact); United States v. Elkins, 732 F.2d 1280, 1286-87 (6th Cir. 1984) (finding "ample evidence" to support girlfriend's conviction for accessory after the fact where she assisted the principal in destroying evidence).

Accordingly, sufficient evidence exists for a rational juror to find Gentry guilty of accessory after the fact to murder and his convictions and sentences should be affirmed.

CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

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August 10, 2022

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable J. Derham Cole, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

Respondent,

vs.

ROBERT TYRELL GENTRY,

Appellant.

Appellate Case No. 2021-000692

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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