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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

Appellate Case No. 2022-001618

The Honorable Edward Miller, Circuit Court Judge

State of South Carolina……Respondent,

v.

Quavon Deshay Edmunds ……Appellant.

INITIAL BRIEF OF APPELLANT

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I. Whether the trial court erred in charging the jury on accomplice liability.

II. Whether the trial court erred in failing to grant the motion for directed verdict.

STATEMENT OF THE CASE

Quavon Edmunds was indicted for two counts of attempted murder, possession of a weapon during the commission of a violent crime, unlawful discharge of a firearm, and criminal conspiracy. Tr. 22–23, Indictments. He proceeded to a jury trial before the Honorable Edward W. Miller from November 7–9, 2022. Tr. 1. He was ultimately convicted on all counts and sentenced to twenty-five years' imprisonment for each count of attempted murder, five years' imprisonment for possession of a firearm, ten years' imprisonment for unlawful discharge of a firearm, and five years' imprisonment for criminal conspiracy, to be served concurrently. Tr. 532–33, 537. This appeal follows.

STANDARD OF REVIEW

"In criminal cases, appellate courts sit to review errors of law only." *State v. Cross*, 427 S.C. 465, 473, 832 S.E.2d 281, 285 (2019). "[T]he conduct of a trial is largely within the discretion of the presiding judge, to the end that a fair and impartial trial may be had." *State v. Heath*, 232 S.C. 384, 391, 102 S.E.2d 268, 272 (1958). An abuse of that discretion occurs where the trial court's conclusions are based on unsupported factual conclusions or controlled by an error of law. *State v. Prather*, 429 S.C. 583, 598, 840 S.E.2d 551, 559 (2020).

ARGUMENT

Factual Background

On February 7, 2018, police responded to a report of a shooting at the intersection of Rutherford Road and North Main Steet in Greenville, South Carolina, with a gunshot victim. Tr. 111, 408. Shots had been fired from a Camaro into another vehicle driven by Frederick Miller-Knowles. Tr. 67, 152, 154, 409. Miller-Knowles sustained several gunshot wounds, but his passenger, Jaton Lomax, had no physical injuries. Tr. 121, 140, 155. Lomax could not identify the shooters in the car Tr. 154, 160.

Through the course of the investigation, the police discovered that the morning of February 7, 2018, Miller-Knowles and Lee Moss had robbed the home of Edmunds and Damous Beasley[1], stealing marijuana, a game system, jewelry, shoes, a Draco (a small AK-47), and a puppy[2]. Tr. 131–33, 425. Eventually, police arrested Edmunds, Beasley, Curtis Collins, Xavier Concepcion, Jaquin Dodd, and Justin Miller in connection with the shooting incident. Beasley, Collins, Dodd, and Miller were all charged with attempted murder and criminal conspiracy but pled guilty to accessory after the fact and criminal conspiracy.[3] Tr. 171, 193, 215, 268.

Edmunds proceeded to trial on his indictments. Miller-Knowles admitted that he and Moss had been to Edmunds' house before the shooting and had stolen several items, although he stated he just took the marijuana and shoes. Tr. 133, 136. At the time, he was driving a friend's

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[1] Beasley indicated he was not necessarily living there, but he "had stuff over there." Tr. 246.
[2] At trial, Beasley testified Edmunds raises and sells purebred dogs. Tr. 272. He identified the puppy as a Bully, tr. 272, however during sentencing, trial counsel indicated Edmunds raises and sells "Cherbo" dogs, tr. 535.
[3] Concepcion was charged with attempted murder, conspiracy, and accessory after the fact. Tr. 430. Those charges were still pending at the time of Edmunds' trial. Tr. 430.

red Infinity. Tr. 132. He later heard from a friend that Edmunds was looking for them, but he picked up Jaton Lomax, his girlfriend at the time, to take her to work. Tr. 134. He was shot as he was turning at a light at Rutherford Road. Tr. 134. Miller-Knowles stated he did not know any of the defendants prior to being shot, he did not see who shot him and did not see the car. Tr. 137. When law enforcement came to speak with him at the hospital his mouth was wired shut, but he wrote out that Edmunds shot him, and that Edmunds was one of the men at the bond hearing. Tr. 138–39. He admitted, though, that he did not actually know it was Edmunds, someone else had told him. Tr. 139. He did not even know if Edmunds was at a bond hearing. Tr. 145.

Lomax testified that Miller-Knowles had come to her house to take her to work. Tr. 152. She stated Moss was with him and they have a puppy, a gun, and some weed. Tr. 152–53. She explained that she and Miller-Knowles left in a burgundy car and he was shot when they turned on to Rutherford Road. Tr. 153. She stated she did not see the shooter or the shooter's car. Tr. 154, 160. She was not injured when Miller-Knowles was shot. Tr. 155.

The State also presented the testimony of several of Edmunds' co-defendants—Beasley, Collins, Dodd, and Miller—who offered varying stories of the day's events.

Dodd testified he was with Collins and heard about Beasley's house being robbed, so he and Collins went to Beasley's house. Tr. 174, 176. He did not know anyone else at the home besides Beasley and Collins when he arrived but had since learned who Edmunds is and noted he was at the house as well. Tr. 178. He testified he then got into an Impala with Beasley and Collins and "[w]ent driving around." Tr. 176–77, 179, 184. They were later stopped by law enforcement, and he was taken into custody that same day. Tr. 178. He testified on cross examination that he did not see or hear the shooting and had not talked to Edmunds that day. Tr. 185. On redirect, the

solicitor read him from his plea that he had admitted to "coordinated effort among several cars that surrounded the victims before shots were fired" and that "the defendants armed themselves for the confrontation and fled thereafter." Tr. 188. However, on recross, Dodd confessed his admissions at his guilty plea—that they "got together, talked about something, armed [themselves, and] surrounded the car"—never happened. Tr. 190. He again stated he had not seen or heard the shooting, and admitted he did not see the Camaro that shot into the car and did not know who was in it. Tr. 191. He further indicated that Collins was the only person he knew was armed and he never saw Edmunds with a gun, or even talked to him. Tr. 191–92.

Collins testified Beasley called him and told him to come over because he had been robbed, so he and Dodd went to the house. Tr. 196. Collins did not know Edmunds at the time, but knew Beasley was staying with him. Tr. 198. He said when he and Dodd arrived, there were a few people there and they all left shortly thereafter. Tr. 200. He was in Beasley's Impala and there were two Camaros, but he did not know who was in them because he did not really know those people. Tr. 204. He indicated he saw Edmunds at the house but did not recall seeing him afterwards. Tr. 208–209. He testified on cross examination that when he left with Beasley, his understanding was that they were headed to retrieve the stolen items, and there had been no discussion of shooting anyone. Tr. 210. He stated they were following a Camaro, but he was not sure if it was the black or blue one. Tr. 213. Collins also indicated that he did not see or hear the shooting and he had no idea who was in the Camaro. Tr. 213.

Miller testified he had accompanied Edmunds to his house after they both got off work and that was when Edmunds discovered it had been broken into. Tr. 217. He then left and went home to eat. Tr. 218, 219. After he ate, he met up with Edmunds at a gas station in Brutontown. Tr. 219.

He stated he was in his black Camaro, and Edmunds was with Beasley in his black Impala, and they were meeting to look for whoever broke into the house. Tr. 222, 224. He later indicated he did not actually see Edmunds in the Impala since the windows are tinted, but he assumed he was in there. Tr. 238, 241. He also testified they were the only ones there, however in his police interview he had said there was a silver car, a blue car, a school bus, a black Impala, and some type of white car. Tr. 222. He clarified in his testimony that those cars were there, but he was not meeting with all of them. Tr. 222, 242. Miller admitted he was on Rutherford Road when the shooting took place, but stated he did not remember if he talked to Edmunds on the phone, although in his video statement to police after his arrest he indicated he had. Tr. 226. He testified that he was helping his friend because he was worried about this safety since one of the items stolen was a semi-automatic pistol. Tr. 227. He indicated that he was not aware anyone was armed that was part of the search for the stolen items. Tr. 227. He further testified that he did not remember seeing a second Camaro, so he had no idea if Edmunds was in one or not. Tr. 236.

Beasley testified that he remembered very little about that day given the passage of time, even when he was offered his previous statement to refresh his memory. Tr. 247–49. Nevertheless, he eventually testified that he was on his way back from work when he received a call from Edmunds that his house had been broken into, and when he arrived Edmunds and Miller were there. Tr. 253. He called Collins to come over, who arrived with a friend (Dodd). Tr. 253. He testified his Draco gun had been stolen and eventually he left in his Impala with Collins and Dodd to hopefully retrieve his items. Tr. 256, 257, 271. Miller was in a black Camaro; Beasley could not remember if Edmunds got into the blue Camaro with Concepcion. Tr. 258. He did not know where Edmunds was when the shots were fired and did not know who was in the blue Camaro

at that time. Tr. 267–68. Beasley indicated that at the end of the interview he clarified that "everybody agreed just to simply go get the stuff back and nobody said anything about doing anything like what happened." Tr. 277.

The State also called Wendy Arnold who testified on the day of the shooting she was driving home and had stopped at the bottom of her street when she saw two young men walking down the hill. Tr. 294. She described them both as dark skinned, and each wearing a khaki-colored sweatshirt or jacket and blue jeans. Tr. 294. One was thin with braids and the other was shorter, heavyset, with gold-tipped braids or dreads. Tr. 294. The heavier set man with gold tips suddenly turned around and ran up the street, cutting through the corner of her neighbor's house while the other, thin man kept walking down the street talking on the phone. Tr. 294–95. She kept driving and when she saw a gathering of police officers, she called 9-1-1. Tr. 295. She then turned around and headed back towards her house and noticed a dark car at the end of her driveway with the windows down, so she called 9-1-1 again to report that. Tr. 296. As she watched out the window, she saw another dark car, which she thought was a Cadillac, pull up and a young black man got out of it and sat in the car at the end of her driveway. Tr. 297, State's Ex. 23. Arnold further testified that the police came as the young man sat in the car and ended up chasing him through the neighborhood when he tried to run away. Tr. 298.

The State also offered the testimony of Tim Harrison, an intelligence officer with the Greenville Police Department. Tr. 367. Edmunds objected arguing the testimony was inadmissible under Rule 403, SCRCrimP, as vague, non-scientific, and tending to confuse the jury. Tr. 338. After a proffer, the trial court overruled the objection. Tr. 357. Edmunds then argued Officer Harrison would have to be qualified as an expert to offer his testimony. Tr. 361. The State

indicated it had not planned to offer the testimony as expert testimony and did not think it necessary. Tr. 363. However, after calling him to the stand it offered him as an expert in the use of the GeoTime software and cell record translation tools. Tr. 372. Edmunds objected to his qualifications, arguing Officer Harrison had improper training, had only testified once before, had never been qualified as an expert, and does not know how the program works. Tr. 376–77. The trial court disagreed and held not only that Officer Harrison could offer expert testimony, but also that "this jurisdiction has joined many other jurisdictions that have deemed this technology reliable enough to pass the expert witness qualification gate." Tr. 377.

Officer Harrison testified that with the GeoTime technology, he took the T-Mobile records for a phone attributed to Edmunds and was able to map the general location of the devise based on which cell towers it connected to and from which direction it connected to those towers. Tr. 369, 378. His review of the data indicated that Edmunds' cell phone was in the sector covered by the shooting incident at the time of the shooting. Tr. 387, State Ex. 54.

The State also called Russel Irvin, a sergeant in the Violent Crimes Investigation Unit at the Greenville City Police Department, who responded to the scene February 7, 2018. Tr. 408. When he arrived, there were already multiple patrol officers, detectives, emergency medical services, and the fire department. Tr. 408. Because the victim, Miller-Knowles, was being treated near the vehicle, he proceeded to interview Lomax and other individuals who had been in the area. Tr. 409–10. He also reviewed footage obtained from the school bus. Tr. 410. Sergeant Irvin testified that the interviews with Edmunds' codefendants suggested Edmunds had gathered individuals to retrieve his stolen items from Moss. Tr. 412. He generally concluded Beasley was in his black Impala with Dodd and Collins, Concepcion was in in blue Camaro with Edmunds, and

Miller was either at the house, or met them later. Tr. 413. The video from the bus depicted a silver Mercedes as well, but that car was never identified, although Sergeant Irvin determined Concepcion was driving that car at the time of the incident. Tr. 414. He stated they never identified the driver of the blue Camaro. Tr. 414, 424. They also never identified the Cadillac that dropped Concepcion back at his Camaro after the shooting. Tr. 419.

Sergeant Irvin stated that they did no deoxyribonucleic acid (DNA) or gunshot residue (GSR) testing because they had already settled on a suspect, and he felt that with the video obviated any need for GSR testing. Tr. 427–29. He further stated that the only fingerprints identified in the blue Camaro were Concepcion's, the owner of the car. Tr. 430. Sergeant Irvin also discussed interviewing Miller-Knowles at the hospital, who had informed him Edmunds was the one who shot him, and Edmunds was at the bond hearing that was televised. Tr. 425. However, noted Miller-Knowles later indicated he had only been told it was Edmunds. Tr. 425. On cross examination, he stated the televised bond hearing occurred a day or two after the incident and was for Beasley, Concepcion, Dodd, Collins, and Miller. Tr. 438. Edmunds did not turn himself in until February 21, 2018. Tr. 429.

The State rested and defense counsel moved for a directed verdict, arguing the evidence did not show Edmunds "doing anything illegal whatsoever." Tr. 450. At most, the State offered the unsworn testimony of Beasley, which he recanted at the end of his interview as well as at trial. Tr. 450. No one identified Edmunds as the shooter and the only evidence even placing him in the vicinity were based on the location of a phone that was at one point registered to him, which could not even place him in the specific location of the shooting. Tr. 450. The court denied the motion, stating there was sufficient circumstantial evidence to proceed to the jury. Tr. 450.

In his defense, Edmunds offered the testimony of Margaret Beeks, his grandmother. She stated that Edmunds had been with her during the day on February 7, 2018, helping her put up a tent for a party she was hosting. Tr. 458–59. She said it took about two hours to get the tent up and then after that she drove him over to his place to pick up some of his things because he did not want to stay there after he was robbed. Tr. 460–61.

The defense rested and renewed its directed verdict motion, which was denied. Tr. 470. At the charge conference, Edmunds objected to the State's request to charge accomplice liability, arguing the State failed to identify any shooter to whom Edmunds would be an accomplice. Tr. 470–72. The trial court disagreed and ultimately charged the jury:

> A person who joins with another to accomplish an illegal purpose is criminally responsible for everything done by the other person which occurs as a natural consequence of the acts done in carrying out the common plan and purpose. For example, two people can be guilty of killing another person when only one of the two had a gun, there was only one bullet, and only one of the two fired the shot that caused the death. If two or more people are together, acting together, assisting each other in committing the offense, the act of one is the act of all, or as it's sometimes said, the hand of one is the hand of all.

Tr. 519. After deliberating for about an hour, the trial court received a request from the jury to "please explain and give clarification conspiring to commit this please, about hand of one, hand of all" and to allow the jury to see Beasley's interview with law enforcement from February 8. Tr. 527–58; Ct. Ex. 6.

The trial court invited the jury back to the courtroom and gave them the same charge on accomplice liability and conspiracy. Tr. 529–530. It further informed the jury that the tapes of Beasley's interview were not in evidence so memory would have to suffice. Tr. 530–31. After the jury was excused, defense counsel objected based on the example given of one person shooting another with another person present because it mirrored the facts of the case. Tr. 531.

The jury ultimately returned a verdict of guilty on all counts. Tr. 532–33. The trial court sentenced him to twenty-five years' imprisonment for each count of attempted murder, five years' imprisonment for possession of a firearm, ten years' imprisonment for unlawful discharge of a firearm, and five years' imprisonment for criminal conspiracy, to be served concurrently. Tr. 537. Sentencing sheets. This appeal followed.

Analysis

I. The Trial Court Erred in Charging the Jury on Accomplice Liability.

a. The charge was not supported by the facts.

The trial court erred in charging the jury that it could find Edmunds guilty under a theory of accomplice liability. The State adduced no evidence that anyone other than Edmunds might be the shooter, therefore the jury basing its determination of guilt on accomplice liability would require it to impermissibly engage in speculation.

"The trial court must charge the jury on the law applicable to the jury's deliberations." *State v. Williams*, 427 S.C. 246, 249, 830 S.E.2d 904, 905 (2019). Therefore, the law charged must be supported by the evidence presented at trial. *State v. Hill*, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). "[A]n alternate theory of liability may only be charged when the evidence is equivocal on some integral fact and the jury has been presented with evidence upon which it could rely to find the existence or nonexistence of that fact." *Barber v. State*, 393 S.C. 232, 236, 712 S.E.2d 436, 439 (2011). "In order to be guilty as an aider or abettor, the participant must be chargeable with knowledge of the principal's criminal conduct." *State v. Mattison*, 388 S.C. 469, 480, 697 S.E.2d 578, 584 (2010) (quoting *State v. Leonard*, 292 S.C. 133, 137, 355 S.E.2d 270, 272 (1987)). Therefore, there must be evidence supporting "a finding of a prior arranged plan or scheme . . . for

criminal liability to attach to the accomplice who does not directly commit the criminal act." *State v. Washington*, 431 S.C. 394, 406, 848 S.E.2d 779, 785 (2020).

In asserting the charge was proper, the State referenced no evidence supporting it, only vaguely stating "[t]here's case law that you can conspire with an unidentified co-conspirator,[4] so I think there's -- you know, the jury can find that he was hand of one, hand of all with the unidentified person in the blue Camaro or the other co-conspirators." Tr. 471. Initially, no evidence showed any joining together to accomplish an illegal purpose. *See State v. Harry*, 420 S.C. 290, 299, 803 S.E.2d 272, 276 (2017). The testimony is that they were all going to retrieve Edmunds and Beasley's personal property—not to engage in any unlawful act and certainly not murder. So even assuming arguendo that Edmunds was in the blue Camaro and some unknown other person shot Miller-Knowles, there is no evidence Edmunds knew that person was going to do that or was even armed. There is no evidence of who that person might be, and the State plainly rests its case on the jury concluding that Edmunds was the shooter. *See* Tr. 50 (arguing Edmunds "shot into the red Infinity"), 485 (referring to Edmunds as the "principal" who "armed himself . . . for revenge"). The State called four of Edmunds' codefendants who all indicated they pled to accessory after the fact, and the attempted murder charges were dropped. *See* Tr. 171, 193, 215, 268. There was no evidence presented that any of his co-defendant's shot the victim.

The testimony elicited by the State only indicated none of them were in the blue Camaro or fired a gun. Tr. 179, 180, 203, 223, 251. The only other named codefendant was Concepcion, who did not testify. The evidence presented by the State was that he was in a silver Mercedes at

[4] The criminal conspiracy indictment exclusively references Collins, Concepcion, Beasley, Dodd, or Miller as coconspirators—no unidentified conspirator or others. Conspiracy indictment.

the time of the shooting and was no longer driving the blue Camaro but returned to retrieve it (in a black Cadillac driven by an unknown person) and was at that point apprehended. *See* Tr. 260, 414 & State's Ex. 1, 417. The only other "co-conspirator" the State alluded to is whoever got in the blue Camaro after Concepcion got out. The evidence shows this person was not at Edmunds' house when the three cars departed, and the State offered no evidence that he was the shooter.

The Supreme Court addressed this issue in *Washington*, which involved a challenge to an accomplice liability jury charge on appeal from a voluntary manslaughter conviction. 431 S.C. at 397, 848 S.E.2d at 781. Washington argued the charge was improper because there was no evidence upon which the jury could conclude that some confederate of Washington's was the shooter. *Id.* at 402, 848 S.E.2d at 783. The Supreme Court agreed, observing that there was evidence that Washington shot the victim, and there was evidence that Washington did *not* shoot the victim—but there was no evidence that his only possible accomplice shot the victim. *Id.* at 410, 848 S.E.2d at 787. Similarly, here, there is no evidence supporting a charge on accomplice liability because there is no evidence that the shots were fired by an accomplice. The confusion caused by this charge is evident in the jury's request to have it explained again. The charge was therefore in error and prejudiced Edmunds. The evidence presented was hardly conclusive as to Edmunds' guilt, which is likely the reason the State requested the jury charge, and the charge impermissibly allowed the jury to speculate that there may have been some other person who shot Miller-Knowles and Edmunds was somewhere there and involved.

b. The language of the charge was an improper charge on the facts.

Furthermore, even if this Court concludes the evidence supported a charge on accomplice liability, the trial court's charge included an example mirroring the alleged facts of the case and

was therefore essentially a charge on the fact.

"Judges shall not charge juries in respect to matters of fact, but shall declare the law." S.C. Const. art. V, § 21. "The purpose of [the Constitutional prohibition on judge's charging that facts] is to prevent the trial judge from intimating to the jury his opinion of the case what weight or credence should be given to the evidence and participating in any manner with the jury's finding of fact." *Enlee v. Seaboard Air Line Ry.*, 110 S.C. 137, ____, 96 S.E. 490, 492 (1918). "It is not necessary to cite authority to support the proposition that in the course of the trial of a criminal case the trial Judge must refrain from all comment which tends to indicate his opinion as to the weight or sufficiency of the evidence, the credibility of the witnesses, the guilt of the accused, or as to the controverted facts, and the Constitution expressly prohibits the Judge from charging them as to the facts." *State v. Bagwell*, 201 S.C. 387, 23 S.E.2d 244, 250 (1942). Therefore, "the court should be extremely cautious not to suggest his opinion on any fact in issue, and this, whether orally during the progress of the trial, or in the form of instructions, when the evidence has all been heard." *State v. Pruitt*, 187 S.C. 58, 196 S.E. 371, 374 (1938).

In charging accomplice liability, the trial court twice referenced the example that "two people can be guilty of killing another person when only one of the two had a gun, there was only one bullet, and only one of the two fired the shot that caused the death. If two or more people are together, acting together, assisting each other in committing the offense, the act of one is the act of all, or as it's sometimes said, the hand of one is the hand of all." Tr. 519, 529. This case involved the firing of a single gun that led to at least seven people being charged with attempted murder. The trial court's example intimates that the evidence presented satisfied the legal definition and thereby invade the jury's province as the ultimate factfinder. To conclude the statement was in

error, it need not be a conscious, overt expression of the court's opinion. As the Supreme Court noted in *State v. Thorne*, 237 S.C. 248, 116 S.E.2d 854 (1960), a "Judge must be careful to avoid expressing, or even intimating, any opinion, as to the facts, and if he does so, whether intentionally or unintentionally, a new trial must be granted." *Id.* at 251, 116 S.E.2d at 855. In that case, which involved a defendant charged with rape, the Court considered a jury charge which ended by the trial court stating:

> every man the law says has the right to walk up and down the streets and highways of our State without fear of being robbed of his money. And I will tell you frankly that every woman has the right to walk upon the highways and our streets without the fear of being robbed of something which God alone gives her and when that is stolen from her, she is very poor indeed. Such an act is not looked upon by the law with any degree of lightness. The facts are for you. The law is established in this State as it is written.

Id. at 250, 116 S.E.2d at 855. The Court concluded this charge was in error. Although it did not explicitly refer to anything in evidence—and actually referenced the jury's province over factfinding—the Court recognized that this statement suggested the trial court's opinion on the facts.

It is, of course, generally stated that an alleged error in a jury charge should be considered in the context of the charge as a whole and a substantially correct charge will not require reversal. *State v. Brandt*, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011). The trial court does start its charge by assuring the jurors they are the "sole judges of the facts in this case." Tr. 516. However, the Supreme Court has recognized that charging the jury that it is the final arbiter of the facts does not cure a violation of the constitutional prohibition on the judge charging the facts:

> It is therefore clear that while a charge must be considered as a whole, an erroneous charge will not be cured by it being stated that all questions of fact are exclusively for the jury, as the real objective of the constitutional provision against charging on the facts is to leave all questions of fact to the jury to be decided according to their

> own judgment, unbiased by an expression or even intimation of any opinion from the judge.

State v. Smith, 227 S.C. 400, 409–10, 88 S.E.2d 345, 350 (1955). The Supreme Court in *Thorne* reversed the defendant's conviction based on an unconstitutional jury charge even though the defendant confessed on the stand that he should be executed for his crime. 237 S.C. at 252, 116 S.E.2d at 856.

The trial court's charge was in error and this Court should reverse and remand for a new trial.

II. The Trial Court Erred in Denying Edmunds' Directed Verdict Motion.

The State's evidence failed to provide evidence on which a jury could fairly and logically find Edmunds guilty of any of the crimes charged. The trial court therefore erred in denying Edmunds' motion for directed verdict.

"A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." *Brandt*, 393 S.C. at 542, 713 S.E.2d at 599. "[I]n ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." *State v. Bennett*, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016). "When the evidence presented merely raises a suspicion of the accused's guilt, the trial court should not refuse to grant the directed verdict motion." *State v. Phillips*, 416 S.C. 184, 192, 785 S.E.2d 448, 452 (2016). "'Suspicion' implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." *State v. Cherry*, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004). A case should only be submitted to the jury "if there be any substantial evidence which reasonably tends

to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced." *State v. Littlejohn*, 228 S.C. 324, 329, 89 S.E.2d 924, 926 (1955).

Even construing the evidence in the light most favorable to the State, the evidence does not reasonably tend to prove Edmunds' guilt. Despite producing the testimony of Miller-Knowles and Lomax, a witness, and his four co-defendants, no one testified that Edmunds was the shooter in the blue Camaro or even confirmed he was in the blue Camaro at all. Dodd and Collins both testified they did not see or hear the shooting or know where Edmunds was at that time. Tr. 185, 191–92; 209, 213. Miller testified he thought Edmunds was in the black Impala with Beasley. Tr. 222. Beasley's direct testimony was predominately impeachment with prior statement to law enforcement, but it all left the gap in who was in the blue Camaro and who was driving it after Concepcion got out of it. Tr. 261. There was no forensic evidence placing Edmunds in the blue Camaro. The only other evidence placing him in the area was from phone records that suggests the "general area that the phone could have been" and not an "exact location for the phone." Tr. 390. That general area spanned a mile and a half from the incident. Tr. 398. There is no testimony addressed to who was in the silver Mercedes with Concepcion or who was in the black Cadillac that dropped Concepcion back off at his car. No one testified to seeing Edmunds with a gun and the only person who appeared to be armed was Collins.

And even if he was there, there is no evidence of a conspiracy to commit attempted murder. A conspiracy is "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. The State must therefore prove Edmunds combined with Collins, Concepcion, Beasley, Dodd, or Miller for the purpose of committing attempted murder. *See* Conspiracy Indictment. There was no evidence of

a mutual understanding, agreement, or common intention to commit attempted murder[5], or even murder. To the contrary, the evidence is that the intention was to go to Moss's house to retrieve the stolen items. Tr. 200, 201, 210, 235–36, 277. All of Edmunds' codefendants were immediately apprehended, but there is no evidence law enforcement found anyone armed besides Collins, and not everyone knew he was armed. *See* Tr. 227, 273. For these reasons, there was insufficient evidence to allow any of the charges to be submitted to the jury. At best, the State has shown some facts that seem suspicious, but without more, that cannot withstand directed verdict.

CONCLUSION

Based on the foregoing, the trial court committed reversible error in charging the jury on accomplice liability. Moreover, the trial court erred in denying Edmunds' motion for directed verdict and on that basis, he asks that this Court reverse his conviction.

Respectfully submitted,

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[5] The indictment specifically charges that Edmunds conspired to commit *attempted* murder. This conspiracy charge therefore requires evidence he entered into an agreement with others to act with the specific intent to kill and ultimately not succeed. There is certainly no evidence of that. No one enters into an agreement to collectively fail at something.