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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County
Honorable Diane Schafer Goodstein, Circuit Court Judge
Appellate Case No. 2020-000095

THE STATE,

Respondent,

vs.

KEUNTE D. COBBS,

Appellant.

RESPONDENT'S PETITION FOR REHEARING

Through an unpublished decision issued on March 29, 2023, this Court affirmed Appellant Keunte D. Cobbs's conviction for voluntary manslaughter. State v. Cobbs, Op. No. 2023-UP-130 (S.C. Ct. App. filed Mar. 29, 2023). In doing so, this Court correctly concluded: (1) the trial judge properly denied Cobbs's directed verdict motion; (2) Cobbs's appellate challenge to the submission of the lesser-included offense of voluntary manslaughter to the jury was not properly preserved for appellate review; and (3) the trial judge did not abuse her discretion by declining to dismiss based on a purported speedy trial violation. However, in addition to reaching those correct conclusions, this Court rejected a portion of the State's issue preservation arguments and expressly found "the trial court applied an improper standard when it ruled its only responsibility in deciding Cobbs's directed verdict motion was to ascertain whether there was evidence to support a guilty verdict." Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Respondent ("the State") respectfully petitions for rehearing because this

Court appears to have overlooked and misconstrued several important points when partially rejecting the State's issue preservation arguments and finding error on the part of the trial judge concerning the manner in which she conducted her directed verdict analysis.[1]

First, regarding the matter of issue preservation, issue preservation requirements—as noted in the State's appellate brief—are a fundamental component of appellate procedure in South Carolina that *must* be consistently applied. Gaddy v. Douglass, 359 S.C. 329, 350, 597 S.E.2d 12, 23 (Ct. App. 2004); see Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 329-330, 730 S.E.2d 282, 285 (2012) (instructing South Carolina's issue preservation rules must be applied in a consistent manner and affirming those rules serve an "important function"). The key purpose of those requirements is "to give the trial court a fair opportunity to rule on the issues, and thus provide [the appellate court] with a platform for meaningful appellate review." Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006). Through their enforcement and application, the trial court is guaranteed a chance "to rule properly after it considered all relevant facts, law, and arguments[,]" and the appellate court is provided with everything needed to properly review whatever ruling is made within the limits of the applicable standard of review. I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000); see Queen's Grant, 368

[1] Although this Court correctly affirmed Cobbs's voluntary manslaughter conviction through its decision, the State is currently seeking rehearing solely for the purpose of best ensuring its arguments concerning issue preservation and the propriety of the trial judge's directed verdict analysis are not waived or foreclosed in any future proceedings that potentially may occur in Cobbs's case. See State v. Black, 400 S.C. 10, 28, 732 S.E.2d 880, 890 (2012) (instructing an unappealed ruling—regardless of whether it is right or wrong—becomes the law of the case); cf. State v. Humphries, 354 S.C. 87, 91 n. 2, 579 S.E.2d 613, 615 n. 2 (2003) (declining to address an additional sustaining ground raised by the State that was founded upon a contention the Court of Appeals incorrectly held the trial judge erred).

S.C. at 373, 628 S.E.2d at 919 ("The rationale for the [error preservation] rule is that until the trial court considers the matter and makes a ruling, an appellate court is unable to find error.").

For an issue to be preserved for appellate review pursuant to our issue preservation requirements, 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. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004). Thus, based on those requirements, an issue cannot ordinarily be raised or considered on appeal unless it was first presented to and ruled upon by the trial judge. State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005); see State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial."). Likewise, an appellant is precluded from arguing one ground or theory in support of an issue during trial and then a different ground or theory in support of the issue on appeal. See State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) (instructing a defendant cannot raise one argument in support of an issue at trial and then raise a different argument in support of that issue to the appellate court); State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) ("[A] party cannot argue one theory at trial and a different theory on appeal.").

Considering Cobbs's case with those important issue preservation principles in mind, Cobbs—on appeal—raised *many* arguments as to why the trial judge supposedly erred by refusing to direct a verdict of acquittal, including ones claiming: (1) the trial judge applied an incorrect standard when conducting her directed verdict analysis because she indicated she could not weigh the evidence and was only concerned with the matter of whether evidence had been presented as to each element of the charged offense; (2) the appropriate standard of review that should be applied is one in which the court reviews the evidence to determine whether the State

excluded every reasonable hypothesis of innocence; and (3) his case should be reversed because the State's evidence did not exclude every reasonable hypothesis of innocence. (App. Br. pp. 4-15). Meanwhile, when moving for a directed verdict during trial, defense counsel—in total—argued: "Viewing the evidence in the light most favorable to the State, I find that they have failed to present evidence to convict [Cobbs] on the basis of the case. It's almost entirely circumstantial, and I just don't think it rises to the necessary level." (R. pp. 555-556). Thus, defense counsel—unlike Cobbs on appeal—did not argue the trial judge should have applied a standard in which she—as a judge and not a juror—evaluated what hypotheses of innocence might exist from the evidence and whether any of them seemed reasonable to her, did not argue the analysis the trial judge actually applied was an improper one, and did not argue the State failed to disprove self-defense.

Significantly, because defense counsel did not challenge the method in which the trial judge conducted her directed verdict analysis or raise any arguments concerning the standard that was or should be applied during trial, Cobbs could not properly do so for the first time on appeal based on our state's issue preservation requirements. See Bailey, 298 S.C. at 5, 377 S.E.2d at 584 ("A party cannot argue one ground for a directed verdict in trial and then an alternative ground on appeal."); cf. State v. Benton, 338 S.C. 151, 156-157, 526 S.E.2d 228, 231 (2000) (finding Benton's challenge to the trial judge's refusal to give a requested charge was not preserved for appellate review where Benton "argued one ground in support of a circumstantial evidence charge at trial (State only presented circumstantial evidence of intent) and argues another ground in support of the charge on appeal (palm print is circumstantial evidence)"); State v. Jordan, 255 S.C. 86, 93, 177 S.E.2d 464, 468 (1970) ("The contention of the appellant that the trial judge erred in failing to grant a directed verdict on the ground that the proof showed the

commission of the crime of obtaining property by false pretenses, rather than a breach of trust with fraudulent intent, raises no issue for determination by us because such was not a ground of his motion for a directed verdict. This court has, in numerous cases, held that it will not consider a question on appeal which was not presented in the court below."); State v. Adams, 332 S.C. 139, 144, 504 S.E.2d 124, 126 (Ct. App. 1998) ("This precise argument was neither raised to nor ruled upon by the trial court. Appellant argued only that the evidence did not rise to the 'level of a reasonable doubt as to counts 1, 2, and 3.' . . . Adams's argument, therefore, is not preserved for our review."). Therefore, this Court should respectfully reconsider its partial rejection of the State's issue preservation arguments along with its decision to address the merits of Cobbs's appellate-level—but *not* trial-level—claim the trial judge applied an incorrect standard when conducting her directed verdict analysis, and it should ultimately find such an argument was not properly preserved for appellate review since it was neither raised to nor ruled upon by the trial judge.

Second, regarding the propriety of the directed verdict standard applied by the trial judge, the judge and jury have distinct roles when a jury trial is conducted in a criminal case under our system of justice. Shannon v. United States, 512 U.S. 573, 579 (1994). The judge is tasked with administering the proceedings, instructing the jury on the applicable law, and ensuring all sides receive a fair trial. See State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (explaining a trial judge has a duty to instruct the jury on the law applicable to the case); State v. Stanley, 365 S.C. 24, 39, 615 S.E.2d 455, 463 (Ct. App. 2005) ("A judge has a responsibility for safeguarding both the rights of the accused and the rights of the public in the administration of criminal justice."). Meanwhile, the jury alone has the task of finding the facts, weighing the evidence, choosing what inferences should be drawn from it, and ultimately deciding whether the

State has met its burden of proving the defendant's guilt beyond a reasonable doubt. See United States v. Gaudin, 515 U.S. 506, 514 (1995) ("[T]he jury's constitutional responsibility is not merely to determine the facts, but to apply the law to those facts and draw the ultimate conclusion of guilt or innocence."); State v. Cheeks, 401 S.C. 322, 328, 737 S.E.2d 480, 484 (2013) ("It is always for the jury to determine the facts, and the inferences that are to be drawn from these facts."); State v. Pruitt, 187 S.C. 58, __, 196 S.E. 371, 373 (1938) (explaining the jury is the *sole* judge of the facts); State v. Tillman, 433 S.C. 58, 64-65, 856 S.E.2d 168, 172 (Ct. App. 2021) (instructing "it was within the *jury's* purview to determine what each piece of evidence meant, how the pieces fit together, and whether the sum of the evidence was sufficient to convict"); State v. Battle, 408 S.C. 109, 119, 757 S.E.2d 737, 742 (Ct. App. 2014) ("The task of determining the weight of the evidence lies within the exclusive province of the jury.").

Based on that distinction in roles, our Supreme Court explicitly recognized roughly sixty-seven years ago the analysis a trial judge must apply when reviewing the sufficiency of the evidence is very different from the analysis that must be applied by a jury. State v. Littlejohn, 228 S.C. 324, 328-329, 89 S.E.2d 924, 926 (1955). As to the proper test for a jury, the jury must determine whether the evidence presented constituted proof of the defendant's guilt beyond a reasonable doubt or—stated differently—to the exclusion of every reasonable hypothesis of innocence. Id. at 328, 89 S.E.2d at 926. Importantly, such an analysis "goes to the weight of the evidence," which makes it a matter solely for the jury. Id. at 329, 89 S.E.2d at 926. Conversely, as to the proper test for a trial judge, the trial judge must simply focus on the existence or non-existence of evidence as opposed to its weight and determine whether evidence exists from which the defendant's guilt can reasonably, rationally, and logically be deduced. Id.

Thus, when presented with a directed verdict motion challenging the sufficiency of the evidence presented, the question before the trial judge is simply whether any rational juror could find the essential elements of the crime beyond a reasonable doubt from the evidence viewed in a light most favorable to the State. State v. Bennett, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016); see Jackson v. Virginia, 443 U.S. 307, 319 (1979) ("[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."). In resolving that question, the trial judge must be concerned solely with the existence or non-existence of evidence and is *not* permitted to personally weigh the evidence, decide credibility issues, or resolve conflicts in the testimony or evidence presented. Harvey v. Strickland, 350 S.C. 303, 308, 566 S.E.2d 529, 532 (2002); see State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997) ("When ruling on a motion for a directed verdict, the trial judge is concerned with the existence of evidence, not its weight."); see also State v. Franklin, 80 S.C. 332, __, 60 S.E. 953, 955 (1908) ("The orderly administration of justice requires that all proper evidence should be admitted, and the jury must determine the facts, and testimony should be exceedingly clear and without contradiction where a circuit judge assumes to direct a verdict.").

Significantly, if there is *any* direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused or from which guilt may be fairly or logically deduced, the trial judge should deny a directed verdict motion and submit the case to the jury. State v. Robinson, 310 S.C. 535, 538, 426 S.E.2d 317, 319 (1992). By doing so under such circumstances, the trial judge correctly avoids improperly encroaching upon the jury's exclusive role to find the facts, weigh the evidence, evaluate witness credibility, and resolve any evidentiary conflicts that may have arisen during trial. See Jackson, 443 U.S. at 319 ("[The

directed verdict] 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."); United States v. Hernandez, 433 F.3d 1328, 1334-1335 (11th Cir. 2005) ("[O]ur standard for evaluating the sufficiency of the evidence preserves the right to trial by jury and due process of law. A jury determined Hernandez's guilt, and we respect that determination. Under our standard, we are bound by the jury's credibility determinations, and by its rejection of the inferences raised by the defendant. The evidence does not have to exclude every reasonable hypothesis of innocence or be wholly inconsistent with every conclusion except that of guilt." (citations, internal quotations, brackets in original omitted)); see also Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 174-175 (2010) ("[I]t is exclusively within the jury's province to decide how much weight the evidence deserves.").

Looking to what occurred in Cobbs's case, the trial judge—when presented with a directed verdict motion—recognized the limited nature of her role and correctly explained she was "not charged the responsibility of weighing the evidence." (R. p. 556). The trial judge then proceeded—as was proper and required—to consider whether evidence existed from which the "jury c[ould] make a determination" of guilt as to each and every element of the indicted offense. (R. p. 556). By focusing purely on the existence of evidence as opposed to its weight and considering whether it was sufficient for the jury to be capable of reaching a determination of guilt for all the required elements of the charged crime from it, the trial judge did precisely what she was tasked with doing when conducting a directed verdict analysis. See Bennett, 415 S.C. at 237, 781 S.E.2d at 354 ("[A]lthough the *jury* must consider alternative hypotheses, the *court* must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt. This objective test is founded upon reasonableness. Accordingly,

in ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt."); see also Wright v. West, 505 U.S. 277, 296 (1992) (emphasizing "the prosecution need not affirmatively rule out every hypothesis except that of guilt" in order to survive a challenge to the sufficiency of the evidence in a criminal case); Consol. Edison Co. of New York v. N.L.R.B., 305 U.S. 197, 229 (1938) (explaining "substantial" evidence "means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion"); United States v. Smith, 21 F.4th 122, 139-140 (4th Cir. 2021) ("Substantial evidence is that which a reasonable finder of fact could accept as adequate and sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt." (citation and internal quotations omitted)); United States v. Banker, 876 F.3d 530, 540 (4th Cir. 2017) ("A defendant challenging the sufficiency of the evidence faces a heavy burden. The jury's verdict *must be upheld* on appeal if there is substantial evidence in the record to support it; that is, there must be evidence that a reasonable finder of fact could accept as adequate and sufficient to support the defendant's guilt. The Court's review is thus limited to determining whether, viewing the evidence and the reasonable inferences to be drawn therefrom in the light most favorable to the government, the evidence adduced at trial could support any rational determination of guilty beyond a reasonable doubt." (citations, brackets, internal quotations, and ellipses omitted)); United States v. Wilson, 118 F.3d 228, 234 (4th Cir. 1997) ("We may not weigh the evidence or review the credibility of the witnesses. Those functions are reserved for the jury, and if the evidence supports different, reasonable interpretations, the jury decides which interpretation to believe." (citation and internal quotations omitted)); cf. State v. Larmand, 415 S.C. 23, 32, 780 S.E.2d 892, 896 (2015) ("Although Respondent presented plausible

explanations for each of these facts, our duty is not to weigh the plausibility of the parties' competing explanations. Rather, we must assess whether, in the light most favorable to the State, there was substantial circumstantial evidence from which the jury could infer Respondent's guilt."). Therefore, this Court should respectfully reconsider its determination the trial judge applied an improper standard when ruling of the directed verdict motion, and it should ultimately find the trial judge committed no error through the proper manner in which she conducted her directed verdict analysis.

For all the foregoing reasons coupled with the reasons articulated in the State's brief, the State respectfully requests this Court reconsider this matter pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, vacate its prior opinion, and issue a new opinion affirming Cobbs's voluntary manslaughter conviction without finding any error on the part of the trial judge as far as her directed verdict analysis was concerned since Cobbs's appellate arguments challenging the directed verdict standard applied by the trial judge were—in addition to be inconsistent with well-established South Carolina law—not properly preserved for appellate review and the trial judge committed no error through the manner in which she conducted her analysis when ruling on the directed verdict motion.

Respectfully submitted,

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April 6, 2023

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Appellant.

PROOF OF SERVICE

I, Leigh Ann Stone, certify I have served the within Respondent's Petition for Rehearing on Appellant by sending an electronic copy via email to the address listed in AIS for the following individual:

C. Rauch Wise, Esquire
305 Main Street
Greenwood, SC 29646

I further certify all parties required by Rule to be served have been served.
This 6th day of April, 2023.

Leigh Ann Stone

LEIGH ANN STONE
Legal Assistant
Office of the Attorney General

Leigh Ann Stone

From: Leigh Ann Stone
Sent: Thursday, April 6, 2023 10:01 AM
To: Rauch Wise
Cc: Mark Farthing; William Blitch
Subject: The State v. Keunte D. Cobbs (2020-000095)
Attachments: Cobbs.Pet for Rehearing (03259823xD2C78).PDF

Good Morning Mr. Wise,

Attached please find a copy of the Respondent's Petition for Rehearing in The State v. Keunte D. Cobbs (2020-000095). This petition will be submitted to the Court of Appeals today via the AIS One Drive System.

If you will, please reply to this email to confirm receipt.

Thank you,

LEIGH ANN STONE, Legal Assistant
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