THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to SC Court of Appeals

Appeal from Dorchester County
Hon. Diane Schafer Goodstein, Circuit Court Judge

Appellate Case No. 2023-001160
Lower Case No. 2016-GS-18-01267

The State ..... Respondent,

vs

Keunte D. Cobbs, ... Petitioner.

PETITION FOR WRIT OF CERTIORARI

C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
864-229-5010
S.C. Bar No. 6188
rauchwise@gmail.com

Attorney for the Petitioner

Table of Contents

Page:

Table of Authorities

Page:

Cases:

Statutes:

Other Authorities:

Statement of Issues on Appeal

Did the court of appeals err in failing to direct a verdict in favor of Keunte Cobbs as the State failed to prove substantial circumstantial evidence of sudden heat or passion based upon sufficient legal provocation nor did the state disprove any element of self-defense?

Statement of the Case

Keumte Cobbs was arrested and charged with murder on June 27, 2016 for a shooting that occurred on June 5, 2016. He filed a motion for a speedy trial on December 18, 2017 and again on June 18, 2018. After the first speedy trial motion, the case was ordered to be tried in January of 2018. When the case was not tried, bond was set at $400,000 and a new speedy trial motion was filed and heard on June 18, 2018.

A trial was held on August 20-23, 2018. At this trial Mr. Cobbs was convicted of assault and battery of a high and aggravated nature. The jury was unable to reach a verdict on the charge of murder.

The State re-tried the murder charge on January 6-9, 2020. At this trial, the jury convicted Mr. Cobbs of voluntary manslaughter. He was sentenced to 30 years in prison. Mr. Cobbs filed his Notice of Appeal on January 17, 2020.

The South Carolina Court of Appeals affirmed the conviction in an unpublished opinion on March 29, 2023. The state filed a Petition for Rehearing on April 6, 2023. Mr. Cobbs filed a petition for rehearing on April 12, 2023. On May 24, 2023 the South Carolina Court of Appeals denied the petitions for rehearing but filed a substituted opinion in this matter.[1] Mr. Cobbs filed his second Petition for Rehearing on June 6, 2023. This petition was denied on June 22, 2023.

---

[1] The substituted opinion made minor changes in the order that did not impact the merits of the case.

Standard of Review

As the trial Court erred as a matter of law in failing to direct a verdict, the standard of review should be de novo. While no South Carolina case specifically so holds, other states have recognized the standard of review as de novo. "We hold review of a grant of a directed verdict is, in fact, de novo." *City of Mattoon v. Mentzer*, 282 Ill. App. 3d 628, 633, 668 N.E.2d 601, 604 (1996).

Argument

Question I

Did the trial court err in failing to direct a verdict in favor of Keunte Cobbs when the State failed to prove substantial circumstantial evidence of sudden heat or passion based upon sufficient legal provocation nor did they disprove any element of self-defense?

The trial court applied an incorrect standard in ruling upon the motion for a directed verdict

The court of appeals acknowledged that the trial court applied an improper standard in denying the motion for a directed verdict. The trial judge twice denied the motion for directed verdict. At the conclusion of the trial, the judge stated, "And, again, the question is, for me - - is there evidence on each and every element, and there is. I don't weigh it. I just have to ascertain if it exists. It does." App. at 686, ll 2-5. In her ruling, she decided the motion on the existence of any evidence and not on whether substantial circumstantial evidence exists. The court of appeals held this to be error. The appellate courts in our state have long held that if the case is based upon circumstantial evidence, the evidence must be substantial. *State v. Mitchell*, 332 S.C. 619, 506 S.E.2d 523 (Ct. App. 1998); *State v. Hernandez,* 382 S.C. 620, 677 S.E.2d 603 (2009).

Applying what the court of appeals deemed to be the proper standard of review, they affirmed the conviction. In concluding that the evidence was sufficient to sustain the conviction, the court of appeals made several important factual findings that are not supported by the record. When an appellate court uses unsubstantiated facts to affirm the conviction, they have erred as a matter of law. First, the court stated, "Cobbs exclaimed shortly before his fatal encounter with the victim that he intended to kill someone . . . ." *State v. Cobbs*, Op. № 2023-UP-130, at 2. The court of Appeals was referring to the testimony of Mikell Nelson. App. at 501-511. The

court ignored the fact that this alleged statement was made some hour and fifteen minutes to two hours and fifteen minutes before the actual shooting. App. at 503, ll 14-22; App. at 490, ll 3-5. Second, nothing in the record indicates the alleged comment was referring to either of the two people who were shot. Even if Mr. Cobbs had made the statement in reference to the two individuals, it alone would not be a basis for preventing Mr. Cobbs from asserting self-defense if the two men first drew their weapons on him. The state presented no testimony that Mr. Cobbs had any information that the two men who were shot planned on meeting him at the IHOP or that he even believed they would be there. The testimony established they entered the IHOP after Mr. Cobbs had arrived. They went straight to the restroom upon entering the restaurant. Lastly, if the jury had believed this testimony, they would have convicted Mr. Cobbs of murder as this would have qualified as expressed malice. The trial judge very specifically told the jury malice is not an element of voluntary manslaughter. She stated. "[M]alice, whether it is expressed or implied, is not an element of voluntary manslaughter. . . . And let me say again that malice is not an element of voluntary manslaughter." App. at 678, ll 15-21. The court of appeals affirmed the conviction, at least in part, upon a fact the jury by its verdict did not find.

Furthermore, the testimony of Mikell Nelson hardly qualifies as substantial circumstantial evidence. First, he did not come forward with his testimony for over two and a half years. App. at 504, l 22 to 501, l 9. Detective Peters was not able to verify any of the claims of Mr. Nelson. As he testified:

> Q. (By Mr. Spears) You stated you were not able to corroborate anything he told you?
> A. (By Det. Peters) That's correct.
> Q. Can you just explain why you were unable to?
> A. I went down to the initial interview, down at the Assistant United States

> Attorney's office downtown. And the information we go, he could not provide us a good address where it occurred at. He could not provide us with any proper names. We had generic street names, and there's just no leads to follow up on anything. App. at 533, ll 9-20

The court of appeals erred in using the testimony of this witness as a basis to deny Mr. Cobbs his right to self-defense.[2]

Next the court of appeals incorrectly concluded, "neither the victim nor his companion drew a weapon at the time of the shooting." *Id.* This finding by the court of appeals completely ignores the testimony by Mr. Cobbs that he was drawn on first. He testified, "But they were in front of the door, so it was kind of hard for me to be, like excuse me when you've got two guys pulling out weapons like, they were looking for you." App. at 582, ll 10-13. In addition the record establishes that both men who were shot had reputations for being violent people. Lt. Peters of the Dorchester country sheriff's office, testified Bradford Spells, the survivor, had a reputation in the community for being violent. App. at 596, ll 12-22. Mr. Cobbs testified as to the reputation of both men as to be violent. App. at 573, l 10 to 574, l 10.

Even without the testimony of Mr. Cobbs, there is no evidence to support the statement by the court of appeals. Without the testimony of Mr. Cobbs, all the state has proved is that two men entered a bathroom after Mr. Cobbs entered. All were armed. Mr. Cobbs fired shots and one person was killed and another wounded. From this, the court of appeals concluded that "neither the victim nor his companion drew a weapon at the time of the shooting . . ." *Cobbs* at

---

[2] The state introduced no testimony as to the cell phones showing Mr. Cobbs received a call at the time set forth by the witness. Mr. Cobbs turned over his phones to the Dorchester County Sheriff's office for examination, but the phones were lost. App. at 38, l 16 to 37, l 15. Mr, Spells, the survivor, had his cell phone examined and it showed no contact with Mr. Cobb. App. at 38, ll 1-15; 556, l 22 to 557, l 20.

2. Apparently the court of appeals believes that, as Carl Sagen first said, "The absence of evidence is not evidence of absence." Simply put, the court held that because the state did not offer evidence that neither person shot drew their weapon, means there is proof that neither person drew their weapon. While such may be true in the field of science, it has no place in a court of law. In court, the standard is best said by the Latin phrase, Idem est non esse, et non esse; non deficit jus, sed probatio. This is translated to mean, "What is not proved and what does not exist are the same; it is not a defect of the law, but of proof." Black's Law Dictionary 4th Ed. (1951) p. 879. As there is no proof either person did not draw a weapon, the legal conclusion is that the state has failed, as a matter of law, to prove neither person drew their weapon.

This Court should review the evidence de novo. In ruling on a motion for directed verdict, the court is ruling that as a matter of law, the State has or has not produced sufficient evidence to sustain a conviction. As the lower court ruled on a matter of law, the standard of review should be de novo. This court considers the evidence in the same manner as the trial court. The evidence is viewed in the light most favorable to the State. Neither the lower court, nor this court should consider credibility.[3] As to self defense, this court has said, "While the State must present evidence to support the existence of each element of the crime charged, the State is under no burden to produce evidence to refute the existence of self-defense. However, if there is some evidence to support each element of self-defense—whether found in the State's presentation of evidence or produced by the defendant—it becomes the State's burden to persuade the jury beyond a reasonable doubt that at least one element of the defense does not

---

[3] Of course if the testimony is so incredible that no reasonable juror could believe it a trial court and this Court should not hesitate to disregard it.

exist." *State v. Williams*, 427 S.C. 246, 249–50, 830 S.E.2d 904, 906 (2019). This case must be analyzed to determine if the State has offered substantial circumstantial evidence to negate one of the required elements of self defense.

The State failed to negate an element of self defense

The testimony showed that Keunte Cobbs arrived at the IHOP about 1:49:08. App. at 534, ll 3-8. He had been in the restaurant for about 25 minutes when he went to use the restroom. App. at 534, ll 22-23. He testified he was confronted by two armed men in the small confines of the men's restroom of an IHOP restaurant in Dorchester County. App. at 580, l 12 to 581, l 11. One person was wounded. The other died several days later in the hospital. The surviving person did not testify at trial nor did he make any statements to law enforcement at the time of the shooting or while he was in the hospital. Lt. Dwayne Peters with the Dorchester County Sheriff's office testified Bradford Spells, the survivor, had a reputation in the community for violent and criminal behavior. App. at 596, l 12-22. Mr. Cobbs also testified he knew the reputation of Mr. Spells for violence. App. 570, l 18 to 572, l 2. The undisputed fact in this case is both individuals had a bad reputation for violence. The State offered no evidence to refute this conclusion.

This case should be decided by the principles set forth in *State v. Dickey,* 394 S.C. 491, 716 S.E.2d 97 (2011). The court of appeals did not discuss *Dicky*. In that case this Court found the State had failed to negate self defense when the defendant raised a plausible case of self defense. The Court first noted the essential elements of self defense:

> A person is justified in using deadly force in self-defense when:
> (1) The defendant was without fault in bringing on the difficulty;

> (2) The defendant ... actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger;
>
> (3) If the defense is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief ...; and
>
> (4) The defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.
>
> *Id.* at 499, 716 S.E.2d at 101.

In this case the State has failed to negate any of these factors.

The Defendant was without Difficulty in Bring on the Difficulties

The facts in this case show that Mr. Cobbs first entered the restroom alone. He was followed within seconds by two men both of whom were armed. The facts establish that neither man first seated themselves in the restaurant before heading to the restroom. They entered the restaurant and both went to the restroom. Under these facts, Mr. Cobbs did nothing to bring on the difficulty. The State offered no proof Mr. Cobbs did any act or made any comment that brought on the difficulty. Thus, no credibility issue exists for the jury to decide on this element. The State failed to negate this element. No substantial circumstantial evidence exits to sustain the position that Mr. Cobbs brought on the difficulty.

The Defendant Actually Believed he was in Imminent Danger of Losing his Life or Sustaining Serious Bodily Injury, or he Actually was in Such Imminent Danger

The fact is also undisputed that both men who entered the restroom behind Mr. Cobbs were armed with pistols. Mr. Cobbs testified he observed the pistols before he started shooting. App. at 581, ll 17-19. As our Supreme Court has said. "The accused has a right to rely upon his belief in the necessity, provided that the circumstances in which he was placed were such as

would, in the opinion of the jury, justify such a belief in the mind of a person possessed of ordinary firmness and reason." *State v. Blackstone*, 157 S.C. 278, 154 S.E. 161, 161 (1930). The State cannot overcome its burden by suggesting that Mr. Cobbs did not actually see a firearm. "Fuller was entitled to a charge that the jury could find that Fuller could act on appearances because he testified that he saw Dixon and Phillips open the trunk of their car and also thought he saw a shiny object in Dixon's hand." *State v. Fuller*, 297 S.C. 440, 444, 377 S.E.2d 328, 331 (1989). In addition to the above testimony, the evidence is undisputed that both individuals who were shot had reputations for being violent people. Here, the State has failed in it obligation to prove that Mr. Cobbs improperly believed he was in danger of losing his life or serious bodily injury. The state produced no substantial circumstantial evidence that Mr. Cobbs belief he was in danger was unreasonable.

A Reasonable Prudent Man of Ordinary Firmness and Courage Would have Entertained the Belief he was in Danger of Losing his Life or Serious Bodily Injury

The State has to prove that Mr. Cobbs acted unreasonably when he perceived two armed men in the restroom both of whom had reputations for violence. The State offered no such evidence. The court of appeals, without citing any facts to support the claim, stated, "[A] reasonable person of ordinary firmness and courage in the same situation would not have entertained the same belief." *Cobbs*, at 2. No facts in this case support the conclusion by the court of appeals. As a matter of law, any person of ordinary firmness and courage would be fearful of two armed men, known to be violent, when confronted by them in the small confines of a restroom of a restaurant. The State has offered no substantial circumstantial evidence that this belief by Mr. Cobbs was not reasonable. The court of appeals cited no such evidence.

The Defendant had no Other Probable Means of Avoiding the Danger of Losing his own Life or Sustaining Serious Bodily Injury

The court of appeals did not address this issue. Thus, the opinion does not state if the State had failed to establish substantial circumstantial evidence to refute this claim. The State could not prove that Mr. Cobbs had a duty to retreat because he did not have such a duty. Mr. Cobbs was at a place where he is legally entitled to be. He had no other avenue of escape as the restroom had only one exit. The testimony establishes that the two armed men came into the restroom shortly after Mr. Cobbs. Thus, the undisputed fact is they were blocking the only avenue of escape Mr. Cobbs had. The State has not proposed any facts to suggest otherwise. The State has not negated this element by substantial circumstantial evidence or any other standard.

The Circumstantial Evidence Does nor Support a Finding of Mr. Cobbs Acting in Sudden Heat or Passion with Sufficient Legal provocation

The jury rejected the argument of the State that Mr. Cobbs acted with malice aforethought in shooting Mr. Mack. The jury, instead, found he acted with sudden heat or passion with sufficient legal provocation. The argument of the State had been that Mr. Cobbs simply started shooting the two individuals when they entered the restroom without regards as to whether they were armed. App. at 628, ll 5-11. Under these facts, if believed, the verdict should have been murder. As noted above, the trial court charged the jury that malice is not an element of voluntary manslaughter. The jury has rejected any claim of malice.

What the jury believed to reduce the charge to manslaughter is not known. If they believed that Mr. Cobbs saw both men armed in the restroom, then under the facts the verdict

should have been not guilty as he acted in self defense. The circumstantial evidence in this case simply does not point to the guilt of the accused. It is speculation at best.

Suppose two men are seen outside a house and both are seen armed with pistols. They both enter the house and within seconds shots are heard. One man exits the house and the other man is found dead of a gun shot wound from the firearm of the survivor. Under these facts has the State proven by substantial circumstantial evidence that the survivor is guilty of murder or manslaughter? While murder could be a very real possibility, has it been proven beyond a reasonable doubt? Has the State proven manslaughter under these facts?

Suppose at a trial the survivor testifies he shot in self defense because the other person pulled his pistol first. Could the state argue the credibility of the testimony is for the jury to decide and therefore the murder charge should be upheld? Is this permissible even if the State did nothing to attack the credibility of the survivor except cross examine him? And if at trial, the survivor does not testify, should the trial judge have directed a verdict? Simply put, when there is no evidence as to who was the aggressor, has substantial circumstantial evidence been presented to sustain any conviction?

Mr. Cobbs argues that the evidence in such a case is not legally sufficient to sustain a conviction. In civil cases this court has held that circumstantial evidence must be proven with reasonable certainty. *Gastineau v. Murphy*, 331 S.C. 565, 570-571, 503 S.E.2d 712, 714-715 (1998) ("Viewing the evidence in the light most favorable to Gastineau, the circumstances under which other inspections were performed do not lead with reasonable certainty to the conclusion that Hudson would have told anybody he was there because of Gastineau's report.") If "reasonable certainty" is required in a civil case, then a higher standard is required for a criminal

case. The United States Supreme Court has said that a conviction cannot be sustained "without convincing a proper factfinder of his guilt with utmost certainty." *In re Winship,* 397 U.S. 358, 364 (1970). Again, this constitutional floor exceeds the "any evidence" standard of review. As this court said over ninety years ago "Neither the evidence nor the circumstances warrant his conviction; while the whole case raised a suspicion, and a grave one at that, it does not warrant a verdict of guilty." *State v. Turner*, 117 S.C. 470, ___, 109 S.E. 119, 120 (1921). At the most the evidence here raises a grave suspicion.

Over eighty years ago our state had a standard of review in circumstantial evidence cases that arguably was greater than "substantial circumstantial evidence."[4] "

> All of the facts proved must be consistent with each other, and, taken together, should be of a conclusive nature and tendency, producing a reasonable and moral certainty that the appellant and no one else committed the offense charged. It is not sufficient that they create a probability, though a strong one; and if, therefore, assuming all the facts to be true, which the evidence tends to establish, they may yet be accounted for upon any hypothesis which does not include the guilt of appellant, then the proof fails. The reason for this is that all presumptions of law, independent of evidence, are in favor of innocence, and every person is presumed to be innocent until he is proved to be guilty. As has often been stated, it is not sufficient to establish a probability of guilt arising from the doctrine of chances that the fact charged is likely to be true. *State v. Kimbrell*, 191 S.C. 238, ___, 4 S.E.2d 121, 122 (1939). *See, also, State v. Manis*, 214 S.C. 99, 51 S.E.2d 370 (1949) *overruled by State v. Edwards*, 298 S.C. 272, 379 S.E.2d 888 (1989).

This standard of review became firmly entrenched until *State v. Edwards*, 298 S.C. 272, 379 S.E.2d 888 (1989) which held the standard is whether there is substantial circumstantial

---

[4] Arguably "substantial circumstantial evidence" would have to exclude another reasonable hypothesis to be substantial. As mentioned earlier, if both hypothesis are close to equal the evidence is not, as a matter of law, substantial.

evidence. In *Edwards,* this court stated a judge "should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury *if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.*" *Edwards*, at 275, 379 S.E.2d 888, 889 (1989)(emphasis in original). This Court did not, however, provide any definition for "substantial circumstantial evidence." The term remains undefined today.

This court has, however, applied the *Kimbrell* and *Mains* standard in affirming a conviction. As Justice Toal stated in her concurring opinion, "Put another way, the circumstances proven are consistent with each other, and when taken together, point conclusively to the guilt of Appellant to the exclusion of every other reasonable hypothesis." *State v. Daniels*, 401 S.C. 251, 263, 737 S.E.2d 473, 479 (2012). Support for this standard of review is also found in reversing the conviction in *State v. Hernandez*, 382 S.C. 620, 677 S.E.2d 603 (2009). In footnote 2, after citing the "to the exclusion of every other reasonable hypophysis" standard, this court stated, "[I]t nonetheless illustrates the lack of evidence against Petitioners." *Id.* at 626, 677 S.E.2d at 606. The same principle applies in this case. Applying the "to the exclusion of every other reasonable hypophysis" standard illustrates the lack of evidence against Mr. Cobbs.

This court should grant the petition for writ of certiorari and reverse the conviction of Mr. Cobbs under the standard of appellate review that requires this court to review the evidence to find if the state has excluded every reasonable hypothesis of innocence or the substantial circumstantial evidence standard. As stated by one author:

> As evidenced by the standards of review currently applied in the federal courts, there has been an apparent shift from a standard tailored to ensuring unjust convictions are overturned to a standard

> that ensures proper convictions are upheld. This shift implies a value shift from warranting that the innocent are not convicted to ensuring that the guilty are. If the standards causing this shift have been inadvertently implemented, the federal courts should reconsider the purpose of these standards. If the courts aim to follow the Fourteenth Amendment and In re Winship, they need to fully assess reasonable doubt under circumstantial evidence by consideration of every reasonable hypothesis of innocence and not which theory fashioned by the evidence preponderates.
> Julie Schmidt Chauvin, Comment, *"For It Must Seem Their Guilt": Diluting Reasonable Doubt by Rejecting the Reasonable Hypothesis of Innocence Standard*, 53 LOYOLA L. REV. 217, 253 (2007)

On three occasions this court has cited with approval the following law review article. Irene Merker, Rosenberg, Yale L. Rosenberg, *"Perhaps What Ye Say is Based Only on Conjecture" - - Circumstantial Evidence, Then and Now*, 31 HOUS. L. REV. 1371 (1995). In that article the authors stated:

> In the case of circumstantial evidence, however, the ultimate determination of guilt is based also on inferences from the evidence, and the court is in as good, if not better, position to assess the rationality of these inferences and whether they establish guilt beyond a reasonable doubt. Thus, use of the reasonable hypothesis standard for appellate sufficiency review would preserve the appropriate roles of judge and jury in circumstantial evidence cases.
> *Id.* at 1416

In *Holland v. United States,* 348 U.S. 121 (1954), frequently cited as a basis for not giving a circumstantial evidence charge, the court cautioned appellate courts to review circumstantial evidence case with great caution. The court said "Appellate courts should review the cases, bearing constantly in mind the difficulties that arise when circumstantial evidence as to guilt is the chief weapon of a method that is itself only an approximation." *Id.* at 129. The reason for such caution, while not discussed in the opinion, is obvious. A circumstantial

evidence case is the only type of case tried in our courts where every witness can tell the truth, but an innocent person can be convicted. We should be reminded of the comments of Judge G. Duncan Bellinger in his concurring opinion when he stated, "The maxim of the law is that it is better that many guilty should escape than that one innocent should suffer, and while I am far from expressing the opinion that the person involved is innocent, I think it consistent with the rules by which this Court is governed in like cases that the defendant should have the benefit of the doubt." *State v. Baker*, 208 S.C. 195, 207, 37 S.E.2d 525, 530 (1946)(concurring opinion)

Such a standard of review is used in many states. *New Hampshire v. Roy*, 167 N.H. 276, 292, 111 A.3d 1061, 1075 (2015) ("[T]he reviewing court evaluates the evidence in the light most favorable to the prosecution and determines whether the alternative hypothesis is sufficiently reasonable that a rational juror could not have found proof of guilt beyond a reasonable doubt."); *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) ("This heightened scrutiny requires us to consider 'whether the reasonable inferences that can be drawn from the circumstances proved support a rational hypothesis other than guilt.'"); *United States v. Spradlen*, 662 F.2d 724, 727 (11th Cir. 1981) ("When reviewing the sufficiency of the evidence supporting a criminal conviction, the standard of review is whether, viewing the evidence and all reasonable inferences derived therefrom in the light most favorable to the government, the jury could conclude that the evidence is inconsistent with every reasonable hypothesis of the defendant's innocence."); *Garcia v. State,* 227 So.2d 209, 210 (Fla. Dist. Ct. App. 1969) ("[T]he circumstances relied upon must be not only consistent with guilt, but inconsistent with innocence; and must even go further by excluding every reasonable hypothesis except that of guilt.); *LaPrade v. Commonwealth*, 191 Va. 410, 418, 61 S.E.2d 313, 316 (1950) ("[I]f the

proof relied upon by the Commonwealth is wholly circumstantial, as it here is, then to establish guilt beyond a reasonable doubt all necessary circumstances proved must be consistent with guilt and inconsistent with innocence.")

At least two states have enacted such a standard of review by statute. "The rule as to circumstantial evidence is: assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence." La. Stat. § 15:438. "To warrant a conviction on circumstantial evidence, the proved facts shall not only be consistent with the hypothesis of guilt, but shall exclude every other reasonable hypothesis save that of the guilt of the accused." Ga. Code § 24-14-6.

The day has come for this court to define "substantial circumstantial evidence." The court of appeals was asked to define the term and they declined. When a verdict is affirmed based upon an undefined term, then no one will ever know the basis upon which a conviction is affirmed. Also, the day has come for our courts to definitively say when the evidence supports another reasonable explanation other than guilt, then the State has not met its burden. Viewing the record under this standard, the evidence is not sufficient to convict.

What exactly does "substantial circumstantial evidence" mean? Logic would seem to require that the evidence favoring conviction must be substantially more probable than the evidence favoring an acquittal. Substantial circumstantial evidence cannot mean the odds are equal as to the probability of the defendant being guilty or innocent. Nor can substantial mean a mere 51% probability of being guilty. Such a standard would be a mere modicum.

Under the facts of this case, no facts make the guilt of Mr. Cobbs substantially more likely than his innocence. While credibility is for the jury, the facts established in this case do

not depend upon credibility. At the close of the State's case, all that had been proven was two armed men entered the bathroom of the IHOP shortly after Mr. Cobbs. One person was shot and wounded and the other killed. No facts exist by which the jury could determine whether or not Mr. Cobbs saw the weapon of at least one of the two men who were shot. Once two men, both armed and known to be violent, enter the confines of a small bathroom, Mr. Cobbs has the right to act upon appearances. The State has failed to establish by substantial circumstantial evidence that Mr. Cobbs shot in sudden heat or passion with sufficient legal provocation.

The best standard of review, as mentioned above, is whether the state in proving its case has eliminated every other reasonable hypothesis except that of the guilt of the accused. If there is another logical explanation other than guilt, has the state truly met its burden of proving the case beyond a reasonable doubt? This standard of review would virtually always reverse the wrongfully convicted innocent person at the expense of reversing the convictions of some guilty person. A lesser standard would, however, affirm the convictions of many innocent people at the expense of affirming the conviction of virtually every guilty person. When a judicial system is based upon a presumption of innocence, which should method of determining the sufficiency of evidence should be adopted. If we are to give true meaning to the presumption of innocence and proof beyond a reasonable doubt, then the State has to be required to exclude an innocent explanation. The conviction of Keunte Cobbs should be reversed.

CONCLUSION

For the foregoing reasons this Court should grant the Petition for Writ of Certiorari and reverse the conviction of Keunte D. Cobbs on the ground that the facts were not sufficient to convict him of voluntary manslaughter.

July 27th, 2023

C. Rauch Wise
305 Main Street
Greenwood, SC 29646
(864) 229-5010
Rauchwise@gmail.com
S.C. Bar № 6188

Attorney for Keunte Cobbs