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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to the Court of Appeals
Appeal from Dorchester County
Honorable Diane Schafer Goodstein, Circuit Court Judge
Appellate Case No. 2023-001160

THE STATE,

Respondent,

vs.

KEUNTE D. COBBS,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUE ON CERTIORARI

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

COUNTER- STATEMENT OF ISSUE ON CERTIORARI

Were and are Cobbs's appellate arguments challenging the trial judge's refusal to grant his directed verdict motion properly preserved for appellate review when those arguments were neither raised to nor ruled upon by the trial judge? Moreover, notwithstanding any issue preservation concerns, did the Court of Appeals correctly affirm the trial judge's ruling denying the directed verdict motion when the evidence presented during trial was sufficient for the jury to rationally and logically conclude Cobbs was not acting in self-defense when he fatally shot his victim and was guilty of either murder or voluntary manslaughter?

STATEMENT OF THE CASE

Procedural History

In June of 2016, Petitioner Keunte D. Cobbs was arrested following an investigation into a shooting that had occurred a few weeks earlier. In September of 2016, the Dorchester County Grand Jury indicted Cobbs for murder, attempted murder, and possession of a weapon during the commission of a violent crime. In March of 2018, the Dorchester County Grand Jury additionally indicted Cobbs for possession of a machine gun, sawed-off shotgun, or sawed-off rifle. On August 20, 2018, a jury trial was commenced solely on the murder and attempted murder charges in the Dorchester County Court of General Sessions with the Honorable Perry M. Buckner, III, circuit court judge, presiding.[1] At the conclusion of the four-day trial, the jury convicted Cobbs of the lesser-included offense of assault and battery of a high and aggravated nature ("ABHAN") but was unable to reach a verdict on the murder charge. Following that, Judge Buckner granted a mistrial on the murder charge and sentenced Cobbs to a term of imprisonment of eighteen years for ABHAN. Cobbs then timely appealed.

While that appeal was ongoing, a second jury trial was commenced on the murder charge in the Dorchester County Court of General Sessions on February 6, 2020, with the Honorable Diane Schafer Goodstein, circuit court judge, presiding. At the conclusion of the four-day trial, the jury convicted Cobbs of the lesser-included offense of voluntary manslaughter. Following the verdict, Judge Goodstein sentenced Cobbs to a thirty-year term of imprisonment. Cobbs then timely filed and perfected another appeal.

On appeal, the Court of Appeals—following briefing—issued an unpublished decision unanimously affirming Cobbs's voluntary manslaughter conviction. State v. Cobbs, Op. No.

[1] Shortly before trial, the murder indictment was amended to correct a scrivener's error in the original. (App'x pp. 771-772).

2023-UP-130 (S.C. Ct. App. filed Mar. 29, 2023). Thereafter, both Cobbs and the State timely filed petitions for rehearing, and the petitions were denied. However, the Court of Appeals withdrew its earlier opinion and issued a revised unpublished opinion again affirming Cobbs's conviction. State v. Cobbs, Op. No. 2023-UP-130 (S.C. Ct. App. refiled May 24, 2023). Following that, Cobbs again timely filed a petition for rehearing, and that petition was once again denied. Cobbs then filed a petition for a writ of certiorari in the Supreme Court.

Factual History

Around 1:49 a.m. in the early morning hours of June 5, 2016, Cobbs, who was wearing a red shirt at the time, entered an IHOP restaurant located in Summerville, South Carolina, along with an unknown confederate and sat down at a table. (App'x p. 103; p. 396; pp. 478-479; p. 491; p. 494; p. 534; p. 539; State's Ex. # 76 (Surveillance Footage)). Thereafter, at approximately 2:12 a.m., Cobbs got up and went into the restaurant's bathroom, and his confederate followed in the same direction and waited nearby. (App'x p. 533; p. 538; State's Ex. # 76). Roughly two minutes later, two individuals—Brannon Mack and Bradford Spells—came into the restaurant and quickly headed to the bathroom area. (App'x pp. 539-540; State's Ex. # 76). Within seconds of the two entering the bathroom, numerous gunshots were fired, which led to panic inside the restaurant. (App'x p. 278; p. 296; p. 480; pp. 483-486; p. 490; pp. 539-540). Shortly after that, Spells, Cobbs, and Mack came out of the bathroom one by one and exited the restaurant. (App'x p. 292; p. 539; State's Ex. # 76). Cobbs and his confederate then quickly left the area while Spells and Mack, who both had been shot, collapsed outside. (App'x p. 279; p. 282; pp. 296-297; p. 309; pp. 543-544; pp. 545-546; State's Ex. # 76).

In the ensuing aftermath, emergency medical personnel quickly responded to the scene and transported Spells and Mack to the hospital to receive treatment for their injuries. (App'x

pp. 296-298). Likewise, law enforcement officers from the Dorchester County Sheriff's Office rapidly headed to the restaurant and began an investigation into the shooting. (App'x pp. 277-278; p. 311; pp. 317-319; p. 522). While conducting their investigation at the scene, the officers observed a substantial amount of blood inside the restaurant's bathroom along with numerous cartridge cases and fired bullets, found the key to Mack's vehicle on the bathroom's sink along with some money, and located Spells's cell phone. (App'x pp. 279-280; p. 320; pp. 336-341; p. 349; p. 377; p. 557). Additionally, the officers obtained surveillance footage from the restaurant, and they recovered some fingerprints from the restaurant's front door, including in an area Cobbs touched. (App'x pp. 285-286; pp. 291-292; pp. 353-358). Furthermore, the officers found a loaded gun outside the restaurant near the location where Spells had been found after the shooting, and the emergency medical personnel provided them with another gun that was found amongst Mack's clothing.[2] (App'x pp. 299-301; p. 306; p. 311; pp. 313-314; p. 316).

Ultimately, Spells survived the injuries he sustained in the shooting, but he declined to provide any information to or otherwise cooperate with the officers investigating the incident. (App'x p. 527; pp. 549-550). Meanwhile, Mack—who had been shot approximately six times in the left side of his body—died within just a few days of the shooting due to the severity of his injuries, and he was not able to provide any information to the investigating officers prior to his death. (App'x p. 281; p. 305; p. 309; pp. 740-749; p. 754; p. 756). Nonetheless, despite the lack of information from the victims, officers were able to identify Cobbs as a suspect through information obtained from footage captured at the restaurant along with information provided by a source who indicated Cobbs confessed to shooting the victims because they purportedly owed

[2] Through subsequent analysis of the recovered evidence, an expert forensic firearms examiner was able to determine neither Mack's gun nor Spells's gun fired any of the recovered projectiles connected to the shooting. (App'x p. 398; pp. 402-405; p. 407; p. 409; pp. 460-461).

him a substantial sum of money. (App'x pp. 763-766). As a result, Cobbs was tracked down and arrested at a motel on June 27, 2016. (App'x p. 523; pp. 763-766).

Subsequent to his arrest, Cobbs was indicted for multiple offenses, including murder and attempted murder, and he proceeded forward to trial solely on the murder and attempted murder charges. (App'x p. 10; pp. 767-776). Ultimately, at the conclusion of that first trial, the jury convicted Cobbs of the lesser-included offense of ABHAN in connection to the non-fatal shooting of Spells. (App'x p. 73). However, the jury was unable to reach a verdict on the murder charge stemming from the fatal shooting of Mack, and as a result, the trial judge declared a mistrial as to that charge. (App'x p. 69; pp. 71-72; p. 75).

Thereafter, roughly sixteen months later, Cobbs again proceeded forward to trial on the murder charge. (App'x p. 81; pp. 192-194). During the second murder trial, the solicitor presented evidence including witness testimony, recorded footage, forensic evidence, and fingerprint evidence. (App'x pp. 277-292; pp. 295-389; pp. 393-410; pp. 460-465; pp. 478-480; pp. 482-487; pp. 489-497; pp. 502-517; p. 519; pp. 521-557; pp. 737-756; State's Ex. # 76). Through it, the solicitor offered proof from which the jury could have reasonably and rationally concluded the following sequence of events occurred:

- Around midnight to 1:00 a.m. on the date of the incident, Cobbs was hanging out with "a bunch" of other people in the Fairlawn subdivision in Dorchester County when he received a phone call from someone that led him to exclaim he was "about to kill" some specific—but unidentified—person. (App'x pp. 502-503). Cobbs then "jumped" into a car along with another person and headed off. (App'x p. 503).

- At 1:49 a.m., Cobbs and an associate entered the IHOP restaurant located on Dorchester Road and sat down at a table together. (App'x p. 284; p. 356; p. 396; p. 534; State's Ex. # 76).

- At 2:12 a.m., Cobbs went to the bathroom, and his associate followed behind him, stopped just outside, and waited. (App'x pp. 538-539; State's Ex. # 76).

- At 2:14 a.m., Mack and Spells, who may have been armed with concealed firearms, came into the restaurant and immediately headed to the bathroom. (App'x pp. 299-300; p. 311; p. 316; State's Ex. # 76). Once inside, Mack approached the bathroom counter and set his vehicle's key lanyard—and likely some money—down near the sink. (App'x p. 280; pp. 338-339). No more than twenty-five seconds later, Cobbs alone began shooting a pistol, continued to do so for a period of four seconds, and fired at least eight shots at Mack and Spells. (App'x p. 279; p. 296; pp. 339-341; p. 351; p. 409; pp. 460-461; pp. 539-540; pp. 740-743; p. 749). As those shots were being fired, the bathroom door was open in a manner consistent with someone attempting to leave and the muzzle of Cobbs's gun was positioned to Mack's left side. (App'x p. 334; p. 743; p. 756). Mack was also likely positioned *on the floor* at some point during the shooting based on the upward trajectory of one of the bullets that struck his body. (App'x pp. 740-743; pp. 746-747; p. 749).

- A few seconds after the shooting ceased, Cobbs, Mack, and Spells left the bathroom one by one and exited the restaurant along with Cobbs's associate. (App'x p. 292; p. 539; pp. 545-546; State's Ex. # 76). When they did, none of them were holding a firearm, but Cobbs was moving in a manner that suggested he had one concealed in his clothing. (App'x p. 292; p. 539; pp. 543-544; State's Ex. # 76).

- Once outside, Mack and Spells collapsed from their injuries while Cobbs and his associate fled from the area without waiting for law enforcement to arrive. (App'x p. 279; p. 282; pp. 296-297; p. 309; pp. 543-546; State's Ex. # 76).

- Subsequent to that, Cobbs did not report the shooting and was not arrested until he was tracked down *weeks* later at a motel. (App'x p. 279; p. 523).

Moreover, to refute any suggestion Cobbs acted in self-defense, the solicitor presented a recording of an August 2018 jail call. (App'x p. 528; p. 531; State's Ex. # 93 (Recording of Jail Call)). Through that recording, the jury heard Cobbs deny shooting his victims or acting in self-defense and candidly state he was being encouraged to "say" self-defense even though it was not what had occurred. (State's Ex. # 93). Furthermore, the jury heard Cobbs assert such a made-up "concept of what happened" would mean he shot his "own homeboys." (State's Ex. # 93).

Following the presentation of that evidence, defense counsel moved for a directed verdict and—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." (App'x pp. 559-560) (emphasis added). However, the trial judge denied the motion, stating:

> Of course, as you know, I'm not charged the responsibility of weighing the evidence. That's the jury's determination. I must ascertain whether or not there is evidence from which this jury can make a determination, and that there is evidence on each and every element. I find that there is evidence on each and every element of *the offense*. And on that basis, I would respectfully deny your motion, noting your exception.

(App'x p. 560) (emphasis added).

The trial then proceeded forward, and Cobbs elected to testify in his own defense. (App'x p. 565). During his testimony, Cobbs confirmed he knew Mack and Spells, whom he stated were friends with one of his younger cousins, and claimed the two were "shooters" or "enforcers" who "[b]asically" had a reputation for violence. (App'x pp. 567-568; p. 573; p. 586). He further alleged he had received hearsay information suggesting the two were not pleased with him because he had told them to stay away from his aunt's house in the past, and he asserted he had been warned on multiple occasions to be careful around them prior to the date of the incident. (App'x pp. 574-576). Similarly, Cobbs detailed two past incidents in which he thought Mack and Spells had fired shots outside his aunt's house, including one in which they shot someone named Shaquille White "supposedly" for stealing. (App'x pp. 570-572; p. 587).

As to the incident itself, Cobbs asserted he—while armed with a gun—went alone to the IHOP restaurant at around 1:40 a.m. or 1:50 a.m. (App'x p. 576; pp. 585-586). After arriving there, Cobbs indicated he spoke with a "guy that approached or whatever" and eventually went to the bathroom. (App'x p. 579; p. 585). Upon heading inside, Cobbs stated he entered a stall, and, when he later moved to exit from it, he saw Mack and Spells walking into the bathroom. (App'x pp. 579-580). Upon seeing the pair, Cobbs indicated he became "scared senseless,"

thought "isn't these the same two that they told me was looking for me earlier," and wondered if Mack and Spells had followed him. (App'x p. 580). Cobbs claimed Mack and Spells then saw him, too, and responded by beginning to reach toward their waistbands. (App'x pp. 580-581). At that point, Cobbs indicated he saw Mack and Spells pull their guns, drew his own gun, "beat them to the punch," and started shooting. (App'x pp. 581-582; pp. 590-593). Cobbs claimed he then continued to shoot until he could get to the bathroom's exit, which had purportedly been blocked by Mack and Spells since "[t]hey were just walking in." (App'x pp. 581-583).

In addition to that, Cobbs also acknowledged he had previously stated something *entirely different* during the jail call he had placed after his arrest. (App'x p. 583). Specifically, Cobbs directly admitted he had earlier stated: (1) he was being encouraged to "make up" a "concept" of what happened and say the shooting was done in self-defense; (2) he did not know "nothing about no self-defense;" (3) it would mean he shot his "own homeboys" if he made such a claim; and (4) he did not shoot anyone. (App'x p. 594). Nevertheless, Cobbs insisted he only made those earlier inconsistent statements out of fear of retaliation of some kind. (App'x p. 583).

Following Cobbs's testimony, defense counsel presented some testimony from Lieutenant Peters confirming Spells had a reputation in the community for engaging in violent behavior, and, after that testimony was elicited, the defense rested.[3] (App'x p. 596; p. 608). Defense counsel then renewed his directed verdict motion, arguing: "As to the directed verdict, I mean, it's essentially the same argument, except now you've heard the testimony of [Cobbs]. I don't think there's sufficient evidence to give to the jury for them to reach a verdict." (App'x pp. 611-612). Once again, the trial judge denied the motion, explaining: "[A]gain, the question is, for me -- is there evidence on each and every element, and there is. I don't weigh it. I just have

[3] Significantly, Lieutenant Peters testified he did *not* know anything about Mack's reputation. (App'x pp. 596-597).

to ascertain if it exists. It does. And I would respectfully deny your motion, noting your exception thereto." (App'x p. 612).

Thereafter, the parties presented their closing arguments to the jury. (App'x pp. 617-664). Through his remarks, the solicitor pointed out various problems and inconsistencies with Cobbs's claim of self-defense, reminded the jury Cobbs himself had earlier denied shooting his victims in self-defense, and argued Cobbs should be convicted of murder based on the evidence presented. (App'x pp. 617-635; pp. 660-664). Conversely, through his remarks, defense counsel contended Cobbs was acting in self-defense when he shot his victims and had merely been lying when he earlier made statements to the contrary. (App'x pp. 636-660).

Following that, the trial judge charged the jury on the law. (App'x pp. 664-688). In doing so, the trial judge affirmed the State had the burden of proving Cobbs's guilt beyond a reasonable doubt, discussed the presumption of innocence, thoroughly defined reasonable doubt, explained the differences between direct and circumstantial evidence, and advised the jurors on evaluating witness credibility. (App'x pp. 665-674). Additionally, the trial judge instructed the jury on the elements of murder and—without objection—the elements of the lesser-included offense of voluntary manslaughter. (App'x pp. 676-680; pp. 688-689). Furthermore, the trial judge explained the elements of self-defense and specifically instructed the jurors the State had the burden of disproving self-defense beyond a reasonable doubt. (App'x pp. 680-683).

Subsequently, the case was submitted to the jury, and, after roughly two hours of deliberations, the jury unanimously convicted Cobbs of the lesser-included offense of voluntary manslaughter.[4] (App'x pp. 688-689; p. 694). Cobbs then appealed, arguing—in part—the trial

[4] Notably, during the ensuing sentencing proceedings, Cobbs personally addressed the court, indicated he was "very remorseful," explained it was human nature "to feel remorse for

judge erred by refusing to grant a directed verdict because: (1) she 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 State failed to disprove an element of self-defense; (3) the State failed to present substantial circumstantial evidence to establish he shot his victims in a sudden heat of passion upon sufficient legal provocation; (4) the appropriate analysis 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 (5) the State's evidence did not exclude every reasonable hypothesis of innocence. (App'x pp. 797-811).

On appeal, the Court of Appeals affirmed. (App'x pp. 902-903). In affirming, the Court of Appeals expressly ruled Cobbs's appellate arguments concerning voluntary manslaughter were not properly preserved for appellate review. (App'x p. 904). However, the Court of Appeals concluded Cobbs's appellate arguments related to murder and self-defense were properly preserved and further determined the trial judge "applied an improper standard when it ruled its only responsibility in deciding Cobbs's directed verdict motion was to acertain whether there was evidence to support a guilty verdict." (App'x p. 903). Nevertheless, the Court of Appeals analyzed the evidence presented during trial and found substantial circumstantial evidence had been presented from which the jury could conclude Cobbs was guilty of murder and was not acting in self-defense. (App'x p. 903). Accordingly, the Court of Appeals held the trial judge properly denied Cobbs's directed verdict motion. (App'x p. 903).

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something that you know you did wrong," and candidly apologized to Mack's family. (App'x pp. 704-706).

ARGUMENT

Cobbs's appellate arguments challenging the trial judge's refusal to grant his directed verdict motion were and are not properly preserved for appellate review because those arguments were neither raised to nor ruled upon by the trial judge. However, notwithstanding any issue preservation concerns, the Court of Appeals correctly affirmed the trial judge's ruling denying the directed verdict motion because the evidence presented during trial was sufficient for the jury to rationally and logically conclude Cobbs was not acting in self-defense when he fatally shot his victim and was guilty of either murder or voluntary manslaughter.

Cobbs contends the Court of Appeals erred by affirming the trial judge's denial of his directed verdict motion. In support of that contention, Cobbs—while raising a number of arguments that were never raised to or ruled upon by the trial judge—maintains the State failed to present substantial circumstantial evidence of the required elements of murder and voluntary manslaughter and further failed to disprove the elements of self-defense. Initially, Cobbs's appellate arguments were and are not properly preserved for appellate review because they were neither raised to nor ruled upon by the trial judge. Moreover, Cobbs did *not* challenge the Court of Appeals's finding his voluntary manslaughter appellate arguments were not properly preserved for appellate review, and, thus, that particular finding has now become the law of the case. However, even assuming Cobbs's current arguments were and are somehow preserved for appellate review, the State presented evidence from which the jury could rationally and logically conclude Cobbs was not acting in self-defense when he fatally shot his victim and was guilty of either murder or voluntary manslaughter. Accordingly, the trial judge properly denied the directed verdict motion, the Court of Appeals correctly affirmed that sound ruling on appeal. Cobbs's petition for a writ of certiorari should be denied.

Standard of Review

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). On appeal from the denial of a directed verdict, the

appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must affirm the trial judge's ruling. State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004); see State v. Jenkins, 222 S.C. 359, 360-361, 72 S.E.2d 829, 829 (1952) ("It is not the function of [the appellate] court to pass upon the weight of the evidence, but only to determine its sufficiency to support the verdict[.]"). In other words, "unless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986); see Crawford v. United States, 375 F.2d 332, 334 (D.C. Cir. 1967) ("It is not the function of appellate judges to weigh the evidence and decide that if they had doubts other reasonable persons were compelled to have the same doubts. If that were the test the jury of twelve would be relegated to the very low grade function of secondary fact finders.").

Analysis

A. Cobbs failed to properly preserve his current arguments for appellate review.

In South Carolina, issue preservation requirements are a fundamental component of appellate procedure. Gaddy v. Douglass, 359 S.C. 329, 350, 597 S.E.2d 12, 23 (Ct. App. 2004). 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).

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. State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989); State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003).

In the case sub judice, Cobbs has raised and continues to raise numerous arguments on appeal in support of his contention the trial judge erred by refusing to grant a directed verdict in his case. Significantly though, *none* of those arguments was raised by defense counsel during trial, and the trial judge never considered or ruled upon any of them. Instead, looking to the arguments actually presented to the trial judge, defense counsel solely contended: (1) the evidence presented was not sufficient to either convict Cobbs "on the basis of the case" or rise "to the necessary level;" and (2) there was not sufficient evidence "to give to the jury for them to reach a verdict." Meanwhile, defense counsel 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. Likewise, defense counsel did *not* argue the State failed to present evidence sufficient to establish the elements of the lesser-included offense of voluntary manslaughter and, instead, raised no objections whatsoever when the trial judge submitted that lesser-included offense to the jury. See Ramaker v. State, 46 S.W.3d 519, 230 (Ark. 2001) ("[I]n order to preserve challenges to the sufficiency of the evidence supporting convictions for lesser-included offenses, defendants are required to address the lesser-included offenses, either by name or by apprising trial courts of the elements of the lesser-included offenses, in their motion for directed verdict."); see also State v. Brown, 402 S.C. 119, 125, 740 S.E.2d 493, 496 (2013) (holding Brown's issue with a jury instruction was not preserved for appellate review where Brown explicitly stated to the trial judge he had no objection to the instruction). He similarly did not even point to or mention a single specific element of the indicted offense of murder on which the State's evidence was purportedly lacking. See State v. Sterling, 396 S.C. 599, 612, 723 S.E.2d 176, 183 (2012) ("A general directed verdict motion . . . does not preserve any issue for appeal.").

Under such circumstances, the new arguments Cobbs has raised and continues to raise on appeal in support of his current challenge to the sufficiency of the evidence are not properly preserved for appellate review since they were neither raised to nor ruled upon by the trial judge. 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."). Moreover, because the Court of Appeals found his voluntary manslaughter appellate arguments were unpreserved for review, Cobbs was required to challenge that finding in order to be able to continue to pursue his voluntary manslaughter claim, but he did not do so in either of his petitions for rehearing. (App'x pp. 896-900; pp. 906-910). As a result, the Court of Appeals's issue preservation ruling on Cobbs's voluntary manslaughter claim has become the law of the case, and Cobbs's merits-based arguments on that particular matter can no longer validly be asserted or considered. 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. Galloway, 305 S.C. 258, 263, 407 S.E.2d 662, 665 (Ct. App. 1991) ("[T]he unappealed alternative ruling that the motion was untimely constitutes an independent ground for upholding the judgment."). Therefore, pursuant to the mandates of South Carolina's issue preservation requirements, Cobbs's arguments were not properly preserved for appellate review and should be rejected as procedurally barred. See State v. Head, 330 S.C. 79, 87, 498 S.E.2d 389, 393 (Ct. App. 1997) (instructing an appellate court "cannot address unpreserved errors"). Cobbs's petition for a writ of certiorari should be denied.

B. The trial judge properly denied the directed verdict motion.

Under our system of justice, the judge and jury have distinct roles when a jury trial is conducted in a criminal case. 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. 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, this Court explicitly recognized *more than six decades ago* the analysis a trial judge must apply when reviewing the sufficiency of the evidence is very different than 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. 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)).

In the case at bar, the jury was presented with three key fact-based issues to resolve. Specifically, the jury had to decide whether the State disproved at least one element of self-defense and whether the State met its burden of proof as to either murder or the lesser-included offense of voluntary manslaughter. When viewed in a light most favorable to the State as required, the evidence presented during Cobbs's trial was sufficient to warrant submission of each and every one of those issues to the jury.

Turning to the issue of self-defense, the State introduced a recording in which Cobbs personally and explicitly denied he shot his victims in self-defense. Based on that, *direct* evidence was presented from which the jury could rationally and reasonably conclude Cobbs was

not, in fact, acting in self-defense when he shot Mack, and, thus, the issue of self-defense necessarily had to be submitted to the jury. See State v. Curtis, 356 S.C. 622, 633-634, 591 S.E.2d 600, 605 (2004) ("If there is *any direct evidence* or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury." (emphasis added)); State v. Nesmith, 213 S.C. 60, 67, 48 S.E.2d 595, 598 (1948) (explaining direct evidence is testimony tending to directly to prove a fact in issue if believed); see also State v. Stokes, 381 S.C. 390, 398-399, 673 S.E.2d 434, 438 (2009) (recognizing a prior inconsistent statement constitutes and can be used as substantive evidence). However, even assuming the presentation of direct evidence refuting self-defense was somehow not sufficient to survive a directed verdict motion, the State also introduced evidence establishing Cobbs fled from the scene after the shooting and never reported it to the police, which were actions markedly inconsistent with a genuine claim of self-defense. See People v. Hernandez, 247 P.3d 167, 177 (Cal. 2011) ("Defendant's flight from the scene was . . . inconsistent with self-defense."); State v. Tassin, 129 So. 3d 1235, 1248 (La. Ct. App. 2013) (explaining the defendant's acts of failing to report the shooting after it occurred and fleeing from the scene were inconsistent with a claim of self-defense); State v. Kirby, 697 S.E.2d 496, 502 (N.C. Ct. App. 2010) ("[Kirby]'s flight after the shooting is *clear evidence* from which the jury could reasonably infer that [Kirby] knew that he had not killed in self-defense, otherwise he would have stayed and waited for the police to come, or he would have called the police himself." (emphasis added)); People v. Blake, 21 N.E.3d 214, 217 (N.Y. 2014) (concluding Blake's flight after the shooting was conduct undermining his claim the shooting was justified and committed in self-defense); see also Jenkins v. Anderson, 447 U.S. 231, 240-241 (1980) (determining it was not unconstitutional for Jenkins, who claimed during trial he had acted in self-defense, to be

impeached with evidence establishing he remained silent about fatally stabbing his victim for the roughly two-week period that elapsed between the killing and his arrest). Likewise, some of the evidence presented—such as the evidence establishing Mack's key lanyard was found on the bathroom counter and the bathroom door was open at the time of the shooting—was inconsistent with Cobbs's trial account of the shooting, which raised credibility issues that could only properly be resolved by the jury. See State v. Richburg, 250 S.C. 451, 459, 158 S.E.2d 769, 772 (1968) ("[Richburg] contends . . . that the trial judge should have directed a verdict, as a matter of law, of not guilty in favor of the defendant on the plea of self-defense. When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury. . . . Among other considerations is the credibility of the witnesses, including that of the appellant himself. When there is reason to discredit a witness because of interest or otherwise the judge is not required to take the case from the jury as a matter of law but may and should submit the issues, including credibility of the witnesses, to the jury."); cf. Wright v. West, 505 U.S. 277, 296 (1992) ("As the trier of fact, the jury was entitled to disbelieve West's uncorroborated and confused testimony. In evaluating that testimony, moreover, the jury was entitled to discount West's credibility on account of his prior felony conviction . . . and to take into account West's demeanor when testifying, which neither the Court of Appeals nor we may review. And if the jury did disbelieve West, it was further entitled to consider whatever it concluded to be perjured testimony as affirmative evidence of guilt[.]" (citations omitted)); State v. Butler, 407 S.C. 376, 382, 755 S.E.2d 457, 460 (2014) ("[T]he evidence in the present case created a jury issue on the issue of self-defense. For example, as the trial court recognized when ruling on the directed verdict motion, [Butler]'s various, inconsistent accounts of how the stabbing occurred created credibility issues and questions of fact to be resolved by the jury.").

Therefore, the issue of self-defense was properly a matter for the jury based on the evidence presented.

Turning to the issues of murder and voluntary manslaughter, the evidence introduced during trial indisputably established Cobbs shot Mack and Mack died as a result. Due to that, Cobbs's mental state at the time of the shooting was the critical matter truly in dispute as far as the murder and voluntary manslaughter charges were concerned. Based on some of the evidence presented, Cobbs expressly stated he was going to kill a particular unnamed person earlier on the date of the shooting and then gunned down Mack a short time later. From that, the jury could have reasonably and rationally concluded Cobbs was acting with express malice when he carried out his stated goal of perpetrating a killing. See State v. Wilds, 355 S.C. 269, 276, 584 S.E.2d 138, 142 (Ct. App. 2003) ("Express malice is when there is a deliberate intention to unlawfully take the life of another."); cf. State v. Cox, 221 S.C. 1, 5, 68 S.E.2d 624, 626 (1951) (concluding Cox's act of stating "someone would pay for this" a few weeks before he killed his wife constituted admissible evidence of *express* malice for purpose of proving the charged offense of murder). Meanwhile, based on some of the other evidence presented, Cobbs was in extreme fear of the victims based on numerous threats he had heard, and, when they later came upon him in the restaurant bathroom and provocatively moved in a manner that suggested they were reaching for guns, he became "scared senseless" and proceeded to suddenly shoot Mack *at least six times*, including once while Mack was completely defenseless on the ground. From that, the jury could have reasonably and rationally concluded Cobbs was acting under a sudden heat of passion upon sufficient legal provocation when he repeatedly and uncontrollably shot Mack. See State v. Starnes, 388 S.C. 590, 598-599, 698 S.E.2d 604, 609 (2010) ("[A] person's fear immediately following an attack or threatening act may cause the person to act in a sudden heat of passion. . .

. Evidence that fear caused a person to kill another person in a sudden heat of passion will mitigate a homicide from murder to manslaughter—it will not justify it."); State v. Wiggins, 330 S.C. 538, 549, 500 S.E.2d 489, 495 (1998) ("[F]ear can constitute a basis for voluntary manslaughter."); cf. State v. Lowry, 315 S.C. 396, 399, 434 S.E.2d 272, 274 (1993) (including a voluntary manslaughter instruction was required where the evidence showed "the decedent and Lowry were in a heated argument and that the decedent was about to initiate a physical encounter when the shooting occurred"); State v. Gilliam, 296 S.C. 395, 397, 373 S.E.2d 596, 597 (1988) ("[Gilliam]'s testimony that the victim threatened him and then fired at him would support a finding of sufficient legal provocation and heat of passion."); State v. Oates, 421 S.C. 1, 26, 803 S.E.2d 911, 924 (Ct. App. 2017) (concluding the jury could have reasonably inferred Oates was acting under a sudden heat of passion when he shot his victim six times). Therefore, the issues of whether Mack's killing constituted murder or voluntary manslaughter were properly matters for the jury based on the evidence presented.

Because the evidence presented was sufficient to raise issues for the jury as to murder, voluntary manslaughter, and self-defense, the trial judge was required to submit those issues to the jury so it could carry out its fact-finding role. See State v. Al-Amin, 353 S.C. 405, 411, 578 S.E.2d 32, 35 (Ct. App. 2003) (recognizing the trial judge is "required" to submit a case to the jury when substantial evidence is presented reasonably tending to prove the guilt of the accused or from which the accused's guilt may be fairly and logically deduced), overruled on other grounds by State v. Broadnax, 414 S.C. 468, 779 S.E.2d 789 (2015); see also State v. Gardner, 219 S.C. 97, 104, 64 S.E.2d 130, 134 (1951) ("[T]o warrant the Court in eliminating the offense of manslaughter, it should very clearly appear that there is *no evidence whatsoever* tending to reduce the crime from murder to manslaughter." (emphasis added)); cf. United States v. Zayyad,

741 F.3d 452, 464 (4th Cir. 2014) ("[I]t does not matter that the Government's evidence also supported innocent inferences. As a general proposition, circumstantial evidence may be sufficient to support a guilty verdict even though it does not exclude every reasonable hypothesis consistent with innocence. The jury was entitled to reject the theory consistent with innocence and accept the one consistent with guilt, so long as there was substantial evidence for its choice." (citations, internal quotations, and brackets in original omitted)). Accordingly, notwithstanding the significant issue preservation problems that exist in Cobbs's case, the trial judge properly denied Cobbs's directed verdict motion, and the Court of Appeals correctly affirmed that sound ruling on appeal. See Cavazos v. Smith, 565 U.S. 1, 2 (2011) ("[I]t is the responsibility of the jury—not the court—to decide what conclusions should be drawn from evidence admitted at trial. A reviewing court may set aside the jury's verdict on the ground of insufficient evidence only if no rational trier of fact could have agreed with the jury. . . . Because rational people can sometimes disagree, the inevitable consequence of this settled law is that judges will sometimes encounter convictions that they believe to be mistaken, but that they must nonetheless uphold."); United States v. Moye, 454 F.3d 390, 396 (4th Cir. 2006) ("[A]s appellate judges, we enjoy no greater vantage point on appeal than did the jury at trial and we have no right to usurp the jury's role to find facts. If we did otherwise, we would be substituting our judgment for that of the jury." (citation omitted)). Cobbs's petition for a writ of certiorari should be denied.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted Cobbs's petition for a writ of certiorari should be denied.

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