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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Abbeville County
Honorable Donald B. Hocker, Circuit Court Judge
Honorable Walton J. McLeod, IV, Circuit Court Judge
Appellate Case No. 2022-000333

THE STATE,

Respondent,

vs.

REGINALD DA'ARON CAMPBELL,

Appellant.

FINAL BRIEF OF RESPONDENT

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COUNTER-STATEMENT OF ISSUES ON APPEAL

I.

Did the circuit court judge somehow err by declining to quash the jury in Appellant's case when Appellant failed to meet his burden of establishing Abbeville County's jury selection process was systematically excluding black jurors such that they were being unfairly underrepresented on jury panels from which juries were selected?

II.

Did the trial judge somehow err by declining to grant a directed verdict when the evidence and testimony presented during trial—including the testimony of several witnesses who specifically identified Appellant as the victim's assailant—supported a rational and logical conclusion Appellant was guilty of all the required elements of attempted murder, assault and battery of a high and aggravated nature, and possession of a weapon during the commission of a violent crime? Furthermore, to the extent Appellant continues to challenge the trial judge's refusal to grant a directed verdict as to the attempted murder charge, is that particular issue now moot since the jury acquitted Appellant of attempted murder?

STATEMENT OF THE CASE

In December of 2019, Appellant Reginald Da'Aron Campbell was arrested following an investigation into a shooting that occurred a few days earlier outside a bar in the downtown area of Abbeville, South Carolina. In June of 2020, the Abbeville County Grand Jury indicted Appellant for attempted murder and possession of a weapon during the commission of a violent crime. On February 28, 2022, a jury trial was commenced in the Abbeville County Court of General Sessions with the Honorable Walton J. McLeod, IV, circuit court judge, presiding.[1] At the conclusion of the four-day trial, the jury acquitted Appellant of attempted murder and convicted him of the lesser-included offense of assault and battery of a high and aggravated nature ("ABHAN") along with possession of a weapon during the commission of a violent crime. Following the verdict, the trial judge sentenced Appellant to concurrent terms of imprisonment of fourteen years for ABHAN and five years for possession of a weapon during the commission of a violent crime. Appellant then timely filed a notice of appeal.

[1] Although Judge McLeod presided over the trial itself, the Honorable Donald B. Hocker, circuit court judge, presided over the jury selection process and ruled upon Appellant's pre-trial motion seeking for the jury to be quashed. (R. p. 1; pp. 28-59).

ARGUMENT

I.

The circuit court judge properly declined to quash the jury in Appellant's case because Appellant failed to meet his burden of establishing Abbeville County's jury selection process was systematically excluding black jurors such that they were being unfairly underrepresented on jury panels from which juries were selected.

Relevant Facts

Toward the beginning of Appellant's trial, a jury of twelve jurors and two alternates was selected from two different groups of summoned prospective jurors following the completion of the voir dire process.[2] (R. pp. 28-40). Of the selected jurors, four of the fourteen were black, including both alternates, and the remaining ten were white. (R. pp. 45-46; p. 445).

After the jury was selected, defense counsel promptly moved to quash it. (R. pp. 41-42). As support for his motion, defense counsel alleged black jurors were purportedly underrepresented on the petit jury such that its makeup did not represent a fair cross-section of Abbeville County's population, twenty-seven percent of which was made up of black citizens.[3] (R. pp. 41-42). Bizarrely, defense counsel then asked the circuit court judge to "swap out" one of the white jurors that had been seated on the petit jury with one of the alternates, which he opined would be an "adequate" remedy since it would result in three black jurors being amongst the twelve who would decide Appellant's case.[4] (R. p. 42).

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[2] A third group of summoned prospective jurors was later dismissed after the jury selection process was completed in Appellant's case. (R. pp. 54-55).

[3] Significantly, defense counsel also seemed to clarify he was *not* moving to quash based on the racial composition of the pool of prospective jurors from which the petit jury was selected. (R. p. 44).

[4] In case the absurdity of that proposed remedy was somehow missed, defense counsel's proposal was for the circuit court judge to *intentionally* engage in pure race-based discrimination and replace a seated juror *due solely to that juror's race*, which—for obvious reasons—would have been patently unconstitutional. See Batson v. Kentucky, 476 U.S. 79, 87 (1986) (instructing the

In response to defense counsel's contentions, the circuit court judge prudently rejected defense counsel's proposal of non-randomly replacing a seated juror with an alternate solely for race-based reasons. (R. pp. 43-44; p. 47). Furthermore, the circuit court judge indicated—correctly—he believed a proper analysis of the type of claim being raised by defense counsel necessarily involved more than simply looking to the racial composition of the petit jury and, instead, required more, including an examination of the makeup of the jury panel from which the petit jury was selected. (R. pp. 43-44).

Agreeing with the circuit court judge, the solicitor noted having "exact percentages" of different types of jurors on a petit jury was not the point of the applicable analysis. (R. pp. 47-48). Beyond that, the solicitor pointed out the racial composition of the selected jury was not significantly inconsistent with the racial composition of the county's population regardless of whether the alternates were taken into consideration or not. (R. p. 46).

Following that discussion, the circuit court judge took the matter under advisement so he could obtain some information from the clerk of court about the racial composition of the prospective jurors summoned for jury service during that term of court. (R. pp. 50-54; p. 57). After doing so, the circuit court judge confirmed the information provided by the clerk of court established twenty-four percent of the individuals summoned for the groups of prospective jurors from which Appellant's jury was selected were black, which he concluded was not inconsistent

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denial of a person's participation in jury service on account of the person's race constitutes unconstitutional discrimination against *that person* and emphasizing an individual's race is completely unrelated to the individual's fitness to serve on a jury); cf. Elliott v. State, 972 A.2d 354, 368 (Md. Ct. Spec. App. 2009) ("The question, then, is whether the State's desire to obtain a gender-balanced jury violated Batson and its progeny. We agree with appellant that the State's objective, however well intentioned, was no more permissible than would be the exercise of a peremptory strike against a black prospective juror in order to ensure that the jury reflected the racial make-up of the community as a whole." (citation and internal quotations omitted)).

with the racial composition of Abbeville County's population. (R. p. 57). As a result, he denied the motion to quash.[5] (R. pp. 57-58). Thereafter, Appellant's trial proceeded forward, the jury was sworn, and it ultimately convicted Appellant of several offenses at the conclusion of trial. (R. p. 83; pp. 421-422).

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). As a result, an appellate court is bound by the trial judge's factual findings—including those regarding whether systematic racial discrimination occurred in the jury selection process—unless they are clearly erroneous. State v. Ravenell, 387 S.C. 449, 454, 692 S.E.2d 554, 557 (Ct. App. 2010); see Patton v. Mississippi, 332 U.S. 463, 466 (1947) ("Whether there has been systematic racial discrimination by administrative officials in the selection of jurors is a question to be determined from the facts in each particular case."); Thomas v. Texas, 212 U.S. 278, 281 (1909) (explaining the matter of whether racial discrimination in the jury selection process occurred "was a question of fact"); cf. Hernandez v. New York, 500 U.S. 352, 367 (1991) ("Whether a prosecutor intended to discriminate on the basis of race in challenging potential jurors is . . . a question of historical fact.").

[5] After the circuit court judge discussed the racial composition of the pool of summoned prospective jurors, defense counsel alleged eight of the forty-three jurors who appeared in response to the jury summons in the first group of prospective jurors were black, which constituted approximately nineteen percent of the total jurors in that group, and eight of the thirty-seven jurors who appeared in response to the jury summons in the second group of prospective jurors were black, which constituted twenty-two percent of the total jurors in that group. (R. p. 58). Following that, the circuit court judge—to provide fuller context concerning the jury selection process—noted eighteen additional black prospective jurors were summoned for those two groups but had failed to appear. (R. p. 59).

Analysis

In every criminal case tried in South Carolina, a defendant has a constitutional right to a fair trial. State v. Woods, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001). Significantly, that right "contemplates a jury drawn from a pool broadly representative of the community and impartial in a specific case." State v. Warren, 273 S.C. 159, 162, 255 S.E.2d 668, 669 (1979). Accordingly, it is constitutionally required for petit juries to "be drawn from a source fairly representative of the community[.]" Taylor v. Louisiana, 419 U.S. 522, 538 (1975).

As a result of that requirement, "the jury wheels, pools of names, panels, or venires from which juries are drawn must not systematically exclude distinctive groups in the community and thereby fail to be reasonably representative thereof." Id. Importantly though, the fair cross-section requirement does *not* mean—and has never meant—petit juries must actually "reflect the composition of the community at large." Lockhart v. McCree, 476 U.S. 162, 173 (1986); see also Palacio v. State, 333 S.C. 506, 517, 511 S.E.2d 62, 68 (1999) ("[T]his Court has held that a criminal defendant has no right to a trial by any particular jury, but only a right to a trial by a competent and impartial jury.").

In order to establish a prima facie violation of the fair cross-section requirement, a defendant bears the burden of showing: (1) the group excluded is a "distinctive" group in the community; (2) the representation of the group in venire*s* from which jur*ies* are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) the underrepresentation results from a systematic exclusion of the group in the jury selection process. Duren v. Missouri, 439 U.S. 357, 364 (1979); State v. Patterson, 324 S.C. 5, 21, 482 S.E.2d 760, 767-768 (1997). Significantly, for that burden to be met, the defendant "must offer strong and convincing evidence" in support of his challenge to the fairness of the jury selection

process. State v. Hill, 394 S.C. 280, 288, 715 S.E.2d 368, 373 (Ct. App. 2011), overruled on other grounds by State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016). If—and only if—that burden is satisfied, the responsibility shifts to the State to show the attainment of a fair cross section in the jury selection process is incompatible with a significant state interest. Duren, 439 U.S. at 368.

In the case sub judice, Appellant contends the trial judge reversibly erred by failing to quash the jury in his case. As support for that contention, Appellant maintains the jury pool from which his petit jury was selected was constitutionally inadequate because black prospective jurors were purportedly underrepresented when comparing Abbeville County's population statistics to the percentage of black prospective jurors actually present in the jury pool from which the petit jury was selected. Notably though, Appellant—despite acknowledging underrepresentation resulting from *systematic* exclusion is one of the factors that must be shown in order to establish a prima facie violation of the fair cross-section requirement—does *not* at any point maintain the purported underrepresentation that allegedly occurred in his case was the result of systematic exclusion in the jury selection process. Instead, Appellant—similar to defense counsel at the trial level—bases his appellate claim of a fair cross-section requirement violation on the percentage of black prospective jurors available for selection from the jury pool in his individual case. Significantly though, what was presented in Appellant's case was—just as the circuit court judge accurately recognized—categorically not sufficient to demonstrate black jurors were being systematically excluded from the jury selection process in Abbeville County as was necessary for such a violation to exist.

Looking to what was—and was not—presented during trial, defense counsel chiefly pointed to the number of black jurors on the petit jury selected in Appellant's individual case and

then later noted black prospective jurors were underrepresented by several percentage points in the two groups from which that petit jury was selected. Meanwhile, defense counsel did *not* present any testimony—expert or otherwise—identifying any particular aspect or feature of the selection process employed that was racially discriminatory in nature or result. See State v. Mong, 988 N.W.2d 305, 311 (Iowa 2023) ("To prove systematic exclusion, Mong was required to produce evidence that any alleged underrepresentation resulted from a particular feature (or features) of the jury selection system. Proof that underrepresentation resulted from a particular feature or features of the jury selection system will almost always require expert testimony to (1) identify the precise point of the juror summoning and qualification process in which members of distinctive groups were excluded from the jury pool and (2) offer a plausible explanation of how the operation of the jury system resulted in their exclusion." (citations and internal quotations omitted)). Likewise, defense counsel did not present any historical evidence to support a conclusion the underrepresentation he contended occurred in his case was occurring regularly or systematically from jury panel to jury panel in Abbeville County. Cf. Duren, 439 U.S. at 366 (concluding Duren demonstrated systematic exclusion of female jurors by demonstrating the underrepresentation occurred "not just occasionally but in every weekly venire for a period of nearly a year"); State v. Waitus, 224 S.C. 12, 21-22, 77 S.E.2d 256, 260-261 (1953) (concluding both the petit jury and indictment should have been quashed because the unrebutted evidence presented demonstrated no black jurors were seated on a grand or petit jury in Marion County *for a period of at least twelve years* and no black jurors were seated on a Georgetown County grand jury *for a period of at least five years*).

Thus, in light of that, defense counsel attempted to meet the necessary burden he had to meet merely by showing the specific jury selected in Appellant's case only had two black jurors

(aside from two black alternates) coupled with the fact the specific jury pool from which the petit juror was selected contained a lower percentage of black prospective jurors than the percentage of black residents that lived in Abbeville County. However, such information standing alone was—as a matter of law—insufficient to satisfy Appellant's burden of demonstrating black jurors were being *systematically* excluded from the county's jury selection process. See Akins v. Texas, 325 U.S. 398, 403-404 (1945) ("Purposeful discrimination is *not* sustained by a showing that on a single grand jury the number of members of one race is less than that race's proportion of the eligible individuals. . . . The mere fact of inequality in the number selected does not in itself show discrimination." (emphasis added)); see also Holland v. Illinois, 493 U.S. 474, 480 (1990) ("The Sixth Amendment requirement of a fair cross section on the venire is a means of assuring, not a *representative* jury (which the Constitution does not demand), but an *impartial* one (which it does)."); Taylor, 419 U.S. at 538 (emphasizing no requirement exists for petit juries to "mirror the community and reflect the various distinctive groups in the population"); cf. United States v. Powell, 86 F. App'x 612, 613-614 (4th Cir. 2004) ("The fact that only one member of the venire was black is insufficient to support a challenge to the array."); Mong, 988 N.W.2d at 312 ("Even on appeal, Mong does not identify the precise feature or features in the jury-selection process that allegedly resulted in systematic exclusion. Instead, he argues the alleged disparity between African-Americans in the jury pool and general population is sufficient, in and of itself, to establish systematic exclusion. We disagree. Mong's failure to present evidence defeats his fair-cross-section claim."); Patterson, 342 S.C. at 21, 482 S.E.2d at 768 (concluding Patterson failed to meet his burden of showing a system of exclusion when the record did not reveal why any black jurors were excluded in his case even though Patterson did establish black prospective jurors were underrepresented on the jury panel by several percentage

points); State v. Fleeks, 523 P.3d 220, 235 (Wash. Ct. App. 2023) ("It is not systematic exclusion on the part of King County *if properly summonsed jurors fail to respond*." (emphasis added)).

Accordingly, in the complete absence of *any* evidence of systematic exclusion, Appellant—just as the circuit court judge correctly concluded—failed to meet his burden of demonstrating the jury selection process in Abbeville County was racially discriminatory or otherwise constitutionally flawed, and nothing presented during trial could have validly supported a contrary conclusion. See Moorer v. State, 244 S.C. 102, 110, 135 S.E.2d 713, 716 (1964) ("Discrimination in the selection of a jury must be proved; it cannot be presumed."); see also Powers v. Ohio, 499 U.S. 400, 410-411 (1991) ("Race cannot be a proxy for determining juror bias or competence."); cf. Waitus, 224 S.C. at 20, 77 S.E.2d at 259 (explaining the mere absence of black jurors from a particular petit jury "is insufficient, in and of itself, to show discrimination against the defendant in the selection of the jury"). Therefore, the circuit court judge committed no error by declining to quash the jury in Appellant's case, and there is no legitimate basis upon which that sound ruling could properly be disturbed on appeal. See State v. Rogers, 263 S.C. 373, 381, 210 S.E.2d 604, 608 (1974) ("The burden is upon one challenging the [jury] array, as the moving party, to introduce or offer *strong and convincing evidence* in support of his motion, and the failure to prove such contentions is fatal." (emphasis added)); cf. Truesdale v. Moore, 142 F.3d 749, 755 (4th Cir. 1998) ("To allow Truesdale to substitute evidence of substantial underrepresentation for evidence of systematic exclusion would go a long way towards requiring perfect statistical correspondence between racial percentages in the venire and those in the community. Such a rule would exalt racial proportionality over neutral jury selection procedure."). Appellant's convictions should be affirmed.

II.

The trial judge correctly declined to grant a directed verdict because the evidence and testimony presented during trial—including the testimony of several witnesses who specifically identified Appellant as the victim's assailant—supported a rational and logical conclusion Appellant was guilty of all the required elements of attempted murder, assault and battery of a high and aggravated nature, and possession of a weapon during the commission of a violent crime. Furthermore, to the extent Appellant continues to challenge the trial judge's refusal to grant a directed verdict as to the attempted murder charge, that particular issue has now become moot because the jury acquitted Appellant of attempted murder.

Relevant Facts

Just after midnight on December 29, 2019, numerous people were gathered outside of Wings 101, a bar located on South Main Street in Abbeville, South Carolina, when a physical fight broke out between several individuals. (R. p. 99; pp. 102-103; p. 126; p. 131; pp. 137-138; pp. 151-152; p. 197; p. 219; p. 310; pp. 338-339). In the ensuing chaotic melee, a man with gold teeth and dreadlocks in a black hoodie suddenly punched Charlie Fleming ("Victim") in the face without any provocation, which resulted in him striking his head on a nearby wall before falling back onto his attacker. (R. pp. 173-174; p. 185; pp. 196-199; pp. 201-202; p. 204; pp. 207-208; pp. 221-225; p. 240). Then, just moments after that, Victim was shot in the belly from close range. (R. p. 174; pp. 202-203; p. 206; p. 224).

In the immediate aftermath of that shooting, a number of people rapidly fled from the scene. (R. pp. 175-176; p. 224; p. 312; pp. 331-332). Amongst the individuals who fled, a group of four individuals—including Appellant, who was wearing a black hoodie and had gold teeth and dreadlocks—hastily absconded from the scene in a silver sedan.[6] (R. p. 109; pp. 153-155; p. 165; pp. 175-176; p. 214; p. 224; pp. 260-262; p. 339). Meanwhile, Victim remained behind bleeding on the ground and paralyzed due to the shooting. (R. p. 154; p. 175; p. 224).

[6] By the time of his trial, Appellant had changed his appearance. (R. p. 262).

Based on the shocking events that had just transpired, multiple people still at the scene called for help. (R. pp. 97-99; p. 108; p. 224). In response, law enforcement officers and other emergency responders rushed to the scene, and Victim was transported to the hospital due to the severity of his injuries. (R. pp. 110-112; pp. 115-116; pp. 119-120; p. 178; pp. 224-225; p. 282; pp. 287-288; p. 290). An investigation into the shooting was then swiftly initiated, and, during the course of it, several witnesses identified Appellant by name as the person who struck and shot Victim. (R. p. 118; p. 226; pp. 239-240).

Ultimately, as a result of what was revealed, Appellant was arrested within a matter of just days. (R. p. 257; pp. 439-440). Subsequent to that, Appellant was indicted for attempted murder and possession of a weapon during the commission of a violent crime, and he elected to proceed forward to trial. (R. p. 29; pp. 434-435; pp. 437-438).

During Appellant's trial, multiple witnesses, including Victim himself, offered accounts of the incident and the events leading up to it. (R. pp. 101-109; pp. 134-157; pp. 160-189; pp. 192-208; pp. 211-240). Amongst the different accounts provided, Amanda Mobley indicated she saw Appellant—whom she described as wearing a black hoodie and having gold teeth and dreadlocks—hit Victim outside the bar, Victim fell to the ground *on top of* Appellant after that blow, and a gunshot rang out. (R. p. 165; pp. 173-174). Similarly, Ashleah Willoughby Ashley, who had attended elementary school through high school with Appellant, stated she saw—from only a short distance away—Appellant punch Victim in the face that night, the two fell to the ground with Victim on top of Appellant, and then she heard a gunshot, which led her to realize Appellant had shot Victim since Victim was face down on top of him when the shot was fired into Victim's body. (R. p. 213; pp. 222-225; pp. 227-230; pp. 235-236; p. 240). And, when

asked if she told law enforcement who shot Victim that night, Ashley responded affirmatively and identified Appellant as the person she named. (R. p. 226; p. 234; pp. 239-240).

Beyond those witness accounts, testimony was presented about the law enforcement investigation into the shooting. (R. pp. 110-133; pp. 243-273). Through it, Investigator Duane Balchin of the Abbeville Police Department confirmed he spoke with Mobley and Ashley after the incident and both identified Appellant from a photographic line-up. (R. pp. 243-245; pp. 253-254). Furthermore, Investigator Balchin recounted he spoke with Appellant as part of his investigation and, during their conversation, Appellant personally confirmed he had been at—and been involved in an altercation at—Wings 101 on the night of the shooting without making any further admissions. (R. p. 257; p. 269).

In addition to that testimony and evidence, Dr. Randy Cain, the physician who initially treated Victim at the hospital emergency room, offered expert testimony about Victim's injuries after the shooting. (R. pp. 280-282). Specifically, Dr. Cain noted Victim suffered a gunshot wound to the center of his abdomen and that wound was surrounded by gunshot powder. (R. pp. 283-284). In light of that, Dr. Cain explained the gun used to shoot Victim had to have been mere inches away from Victim's body at most when it was fired. (R. p. 285). Beyond that, Dr. Cain indicated Victim had to be transferred to another facility due to the extent of his injuries so he could receive the specialized care he needed. (R. pp. 287-288).

Likewise, Dr. Bradley Snow, a trauma surgeon from Greenville Hospital, discussed his treatment of Victim after he was transferred to his hospital for further care. (R. p. 288; pp. 290-291). As part of his testimony, Dr. Snow explained Victim was shot in the middle of his belly, which caused damage to his pancreas, resulted in a spinal fracture that left him paralyzed, and required the removal of his spleen along with a portion of his pancreas. (R. pp. 292-296).

Ultimately, due to the shooting, Dr. Snow indicated Victim needed to undergo multiple surgeries and was in the hospital for a period of months.[7] (R. pp. 296-297).

At the conclusion of Dr. Snow's testimony, the solicitor rested the State's case. (R. p. 297). Following that, defense counsel promptly moved for a directed verdict. (R. p. 297). As support for that motion, defense counsel contended he believed the case "at best" sounded like ABHAN to him and, therefore, asked the trial judge to *either* grant a directed verdict in the case or grant a directed verdict as to the attempted murder charge and instruct the jury on ABHAN. (R. p. 297). Defense counsel further argued he did not believe a specific intent to kill had been proven and asserted he did not think anyone "really" identified Appellant as the shooter. (R. pp. 297-298). However, defense counsel candidly conceded some of the testimony had been "differing" on the matter of identification. (R. pp. 297-298).

In rebuttal, the solicitor contended the evidence and testimony presented demonstrated Appellant struck Victim and then shot him from close range. (R. pp. 298-299). Based on that, the solicitor argued what was presented was sufficient to require the submission of the case to the jury, including on the attempted murder charge. (R. pp. 298-299).

Upon considering the arguments of counsel, the trial judge declined to grant a directed verdict. (R. p. 299). In so declining, the trial judge concluded both direct and circumstantial evidence had been presented from which the jury could validly convict Appellant of the charged offenses. (R. p. 299).

Following that, two of Appellant's friends testified for the defense. (R. pp. 308-333; pp. 336-351). Through their testimony, both confirmed Appellant was present at the scene at the

[7] During his own testimony, Victim personally indicated his period of hospitalization was approximately seven months long. (R. p. 205).

time of the shooting. (R. pp. 308-309; pp. 336-337). However, each of the friends—who never spoke with or contacted law enforcement despite being aware of Appellant's arrest in connection to the shooting—claimed Appellant could not have been the person who shot Victim based on what they had observed. (R. pp. 315-317; p. 333; pp. 339-341; p. 350).

After that, the defense rested, and defense counsel summarily renewed his earlier motions, including the motion for a directed verdict. (R. pp. 351-352). Once again, the trial judge declined to grant a directed verdict. (R. p. 352).

Subsequently, the parties presented their closing arguments to the jury, and the trial judge instructed the jury on the applicable law. (R. pp. 357-414). The case was then submitted to the jury, and, after deliberating on the matter, the jury acquitted Appellant of attempted murder and convicted him of both ABHAN and possession of a weapon during the commission of a violent crime. (R. p. 415; pp. 421-422).

Standard of Review

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 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."). 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 United States v. Ashley, 606 F.3d 135, 138 (4th Cir. 2010) ("Reversal for insufficient evidence is reserved for the rare case where the prosecution's failure is clear." (citation and internal quotations omitted)).

Analysis

When presented with a motion for a directed verdict 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); see State v. Littlejohn, 228 S.C. 324,

329, 89 S.E.2d 924, 926 (1955) ("[O]n a motion for direction of verdict, the trial judge is concerned with the existence or non-existence of evidence, not with its weight; and, although he 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."). 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*, determine what inferences should be drawn from the facts, 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."); 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.").

In the case at bar, Appellant contends the trial judge erred by refusing to grant a directed verdict as to all the charges, including the attempted murder charge of which he was acquitted, because there was purportedly an "utter lack" of evidence presented from which the jury could rationally and logically find him guilty of any offense. As support for that contention, Appellant maintains: (1) there was supposedly "zero" forensic evidence; (2) no one allegedly "directly" identified him as the person who shot Victim; and (3) there was allegedly "absolutely no" evidence of a specific intent to kill as necessary to support a conviction for attempted murder. Beyond that, Appellant appears to suggest the credibility of the witnesses was suspect because they indicated they had been drinking at the bar on the night of the incident, and—despite

claiming "no one ever even identified [him] as the shooter"—he further assails the reliability of the identification evidence presented. Moreover, Appellant—without identifying any actual supporting evidence—speculates the submission of the attempted murder charge to the jury must have somehow resulted in a compromise verdict on the ABHAN charge.

Initially, to the extent Appellant contends the trial judge erred by declining to grant a directed verdict as to the attempted murder charge, that particular issue is now moot because Appellant was *acquitted* by the jury of attempted murder. See State v. Green, 337 S.C. 67, 71, 522 S.E.2d 602, 604 (Ct. App. 1999) ("When judgment on an issue can have no practical effect upon an existing case or controversy, the issue is moot."); cf. Brady v. United States, 39 F.2d 312, 314 (8th Cir. 1930) (instructing the question of whether the district court judge erred by declining the defendants' directed verdict motion as to a particular count was moot because "the jury acquitted all defendants on that count"); Judice v. State, 707 S.E.2d 114, 116 (Ga. Ct. App. 2011) ("[W]e need not engage in any analysis on this particular enumeration of error because Judice was not convicted on the statutory-rape charge but was, instead, found guilty of attempted statutory rape as a lesser-included offense. As such, the issue of whether the trial court erred in denying his motion for directed verdict of acquittal as to the statutory-rape charge is moot."); Reagan v. State, 637 S.E.2d 113, 116 (Ga. Ct. App. 2006) ("Because the jury acquitted Reagan of murder, . . . convicting him of the lesser included offenses of aggravated assault and kidnapping, his motion for a directed verdict on the murder counts is moot."); People v. Coddington, 470 N.W.2d 478, 488 (Mich. Ct. App. 1991) (concluding Coddington's appellate issue concerning the denial of a directed verdict motion was moot because the defendant was acquitted of the relevant charge); Lowe v. State, 736 So. 2d 404, 406 (Miss. Ct. App. 1999) ("Lowe was acquitted for armed robbery, and therefore the issue of the propriety of the denial of

a directed verdict on that charge is moot."). And, that remains true regardless of Appellant's self-serving speculation the jury's verdict must have been a compromise one since there was no actual evidence of any improper compromise presented.[8] See State v. Hornsby, 326 S.C. 121, 130, 484 S.E.2d 869, 874 (1997) (instructing the presentation of a lesser-included offense to the jury has "not been found to create an impermissible risk of jury compromise" and explaining it "would be speculative" for an appellate court to consider an argument predicated upon a claim of a compromise verdict that lacks any actual evidentiary support); see also People v. Graves, 581 N.W.2d 229, 234 (Mich. 1998) ("We are persuaded by the view that a defendant has no room to complain when he is acquitted of a charge that is improperly submitted to a jury, as long as the defendant is actually convicted of a charge that was properly submitted to the jury. Such a result squares with respect for juries."); cf. Jones v. State, 503 S.E.2d 902, 904 (Ga. Ct. App. 1998) (concluding Jones's appellate issue with the trial judge's refusal to grant a directed verdict on a murder charge was moot since the jury acquitted Jones of that charge and rejecting Jones's claim the submission of the murder charge to the jury encouraged a compromise verdict as "speculation").

Nevertheless, when viewed in a light most favorable to the State as required, the evidence and testimony presented during trial reasonably tended to prove Appellant's guilt for either attempted murder or ABHAN along with possession of a weapon during the commission of a

[8] As part of his jury instructions, the trial judge made clear to the jurors they were only to consider whether Appellant's guilt for ABHAN had been established "*[i]f*" they did not find the State had proven Appellant guilty of attempted murder beyond a reasonable doubt. (R. p. 409) (emphasis added). Significantly, the jurors were presumed to follow the instructions presented to them. See Foye v. State, 335 S.C. 586, 590 n. 1, 518 S.E.2d 265, 267 n. 1 (1999) ("The jury was instructed to determine petitioner's guilt based only on the evidence presented in the trial. A jury is presumed to follow instructions. Therefore, *without some showing the jurors disregarded these instructions*, this Court declines to presume prejudice." (emphasis added and citations omitted)).

violent crime. Therefore, regardless of any mootness problems with Appellant's appellate claims, the trial judge correctly declined to grant a directed verdict in Appellant's case, *including* as to the attempted murder charge.

Demonstrating that fact, the evidence and testimony presented during trial indisputably established Victim was shot with a gun during the incident.[9] And, regarding the identity of the person who shot Victim, no less than two witnesses identified Appellant as being the only person who could have been the shooter under the particular circumstances involved. See State v. Salisbury, 343 S.C. 520, 525, 541 S.E.2d 247, 249 (2001) (recognizing witnesses' personal observations and opinions on the actions they observed constitute direct evidence sufficient to establish identity); see also Graham v. State, 786 S.E.2d 857, 859 (Ga. Ct. App. 2016) ("[T]he reliability of a witness' identification goes to the credibility and weight of the witness' testimony, a matter that is within the province of the jury, not [an appellate court]."). Moreover, in addition to that, testimony and evidence was presented—including Appellant's own statement to law enforcement—placing Appellant at the scene of the crime at the time of the shooting, and what else was presented demonstrated Appellant was wearing the same clothing as and matched the physical appearance of the person who assaulted Victim just before Victim was shot from close range while on top of the very person who had attacked him. Cf. State v. McClinton, 265 S.C. 171, 174, 217 S.E.2d 584, 585 (1975) (concluding sufficient evidence of identity was presented to survive a directed verdict motion even though no direct testimony was presented identifying McClinton as the assailant because the arresting officers testified McClinton was discovered wearing similar clothing to the assailant's clothing as described by the victim, he was

[9] In fact, the bullet itself was recovered from Victim's body and introduced into evidence during trial. (R. pp. 263-264).

arrested in the vicinity of the crime scene, and his hand appeared to have recently been bitten). In light of that, sufficient evidence was presented from which the jury could rationally and logically conclude Appellant was indeed the person who fired the gunshot that caused Victim's terrible injuries.

Likewise, since the evidence and testimony presented supported a rational and logical conclusion Appellant shot Victim from close range in a part of his body commonly understood to contain vital organs, the jury could have also reasonably inferred Appellant's act in that regard was committed with a specific intent to kill since such an act was one naturally tending to cause death. See S.C. Code Ann. § 16-3-29 ("A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder."); State v. King, 422 S.C. 47, 55, 810 S.E.2d 18, 22 (2017) (concluding a specific intent to kill is an element of the statutory offense of attempted murder); State v. Sutton, 340 S.C. 393, 397 n. 5, 532 S.E.2d 283, 285 n. 5 (2000) ("A specific intent to kill may be, and normally is, inferred from the surrounding circumstances, such as the character of the attack, the use of a deadly weapon, and the nature and extent of the victim's injuries."); State v. Williams, 422 S.C. 525, 542, 812 S.E.2d 917, 926 (Ct. App. 2018) (instructing "the specific intent to kill [for attempted murder] can be inferred by the surrounding circumstances of the case, including the use of a deadly weapon and the character of the attack"); see also State v. Haney, 257 S.C. 89, 91, 184 S.E.2d 344, 345 (1971) ("Absent an admission by the defendant, proof of intent necessarily rests on inference from conduct."); cf. Sharma v. State, 56 P.3d 868, 875 (Nev. 2002) (finding a jury instruction "directing the jury that a specific intent to kill may be inferred from an external circumstance, i.e., the intentional use of a deadly weapon upon the person of another at a vital part" to be proper in an attempted murder case). And, even if what was presented was

ultimately found not to be sufficient to prove specific intent to the jury's satisfaction, the evidence and testimony concerning Victim's extensive injuries and paralysis—when considered along with the other evidence and testimony presented—reasonably and rationally supported a conclusion Appellant caused great bodily harm to Victim by injuring him through means likely to cause death or great bodily injury. See S.C. Code Ann. § 16-3-600(B)(1) (explaining an individual is guilty of the statutory offense of ABHAN if he or she unlawfully injures another person and either great bodily injury results or the act is accomplished by means likely to produce death or great bodily injury); see also S.C. Code Ann. § 16-3-600(A)(1) (defining "great bodily injury" as "bodily injury which causes a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ"). Resultantly, sufficient evidence was presented during Appellant's trial from which the jury could rationally and logically convict Appellant of all the required elements of either the indicted offense of attempted murder or the lesser-included offense of ABHAN.

Finally, the evidence and testimony presented established a gun was used to shoot Victim, and both attempted murder and ABHAN are, in fact, "violent" crimes pursuant to South Carolina law. See S.C. Code Ann. § 16-23-490(A) (prohibiting the possession of a firearm during the commission of a violent crime); see also S.C. Code Ann. § 16-1-60 (identifying attempted murder and ABHAN as violent crimes). Thus, sufficient evidence was presented from which the jury could reasonably find Appellant guilty of possession of a weapon during the commission of a violent crime.

Because the evidence and testimony presented supported a fair and reasonable conclusion Appellant was guilty of each of the charges he was facing, the trial judge was required to submit Appellant's case to the jury so it could carry out its fact-finding role. See State v. Shaw, 258

S.C. 236, 239, 188 S.E.2d 186, 187 (1972) ("The weight to be accorded the testimony was for the jury to determine *and not this Court*." (emphasis added)); 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). Accordingly, the trial judge correctly declined to grant a directed verdict as to any of the charges, and there is no legitimate basis—including the credibility-and-reliability-based grounds that Appellant appears to now be advancing—upon which that ruling can be disturbed on appeal. See Bennett, 415 S.C. at 236-237, 781 S.E.2d at 354 ("[W]hen ruling on a directed verdict motion, the trial court views the evidence in the light most favorable to the State and *must* submit the case to the jury if there is any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced." (emphasis added and citation and internal quotations omitted)); see also State v. Fleming, 254 S.C. 415, 420, 175 S.E.2d 624, 626 (1970) ("A motion for a directed verdict of not guilty is properly refused where the determination of guilt is dependent upon the credibility of the witnesses."); cf. Graham, 786 S.E.2d at 860 ("[A]ny such inconsistencies go to the weight and credibility of the in-court identifications, and it is for the jury to assess the witness' credibility and resolve any conflicts in the evidence."). Appellant's convictions should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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January 16, 2024

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Abbeville County
Honorable Donald B. Hocker, Circuit Court Judge
Honorable Walton J. McLeod, IV, Circuit Court Judge
Appellate Case No. 2022-000333

THE STATE,

Respondent,

vs.

REGINALD DA'ARON CAMPBELL,

Appellant.

CERTIFICATE OF COUNSEL

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

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