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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 2023-001544

The State, ...Respondent,

v.

Anthony Sanders, ...Petitioner.

BRIEF OF RESPONDENT PURSUANT TO WHITE V. STATE

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RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

1. Whether the trial court properly elected not to direct a verdict of acquittal where the State presented substantial circumstantial evidence from which the fact finder could fairly and logically find Petitioner guilty of three counts of murder?

STATEMENT OF THE CASE

Anthony Sanders (Petitioner) was indicted at the September 2007 term of the Dorchester County Grand Jury for three counts of murder (2007-GS-18-1296, -1297, & -1298). On March 8-9, 2010, he proceeded to a bench trial before the Honorable R. Markley Dennis. Petitioner was represented by S. Boyd Young and Laura Wood of the South Carolina Commission on Indigent Defense, as well as Mark A. Leiendecker and Mitchell Farley of the First Circuit Public Defender's Office. The State was represented by Assistant Solicitors Russell Hilton and Blair Jennings of the First Circuit Solicitor's Office. At the conclusion of trial, Judge Dennis found Petitioner guilty as charged and sentenced him to three concurrent terms of life imprisonment without the possibility of parole. (App.p.239-p.517; p.795-p.803).

On March 24, 2010, Petitioner attempted to file a notice of appeal (App.p.518-p.519); however, on April 22, 2010, it was dismissed due to Petitioner's failure to provide the court with a proof of service showing it was timely served on opposing counsel. (App.p.520). Petitioner submitted subsequent letters that were construed by the Court as a request to rehear the order of dismissal, but by Order filed July 15, 2010, that request was denied. (App.p.521-p.525). The Remittitur was sent to the lower court on August 25, 2010. (App.p.526).

On January 6, 2011, Petitioner filed an application for post-conviction relief (PCR) (App.p.527-p.540), and on May 4, 2011, the State filed a return. (App.p.533-p.537). On May 17, 2012, the State filed a motion to dismiss the PCR application on grounds it violated the terms of a bargained-for agreement between the parties (App.p.538-p.540), and on May 22, 2012, the motion proceeded to a hearing in Orangeburg County before the Honorable DeAndrea G. Benjamin. Petitioner was present and was represented by Jessica Cassick, and the State was represented by Assistant Deputy Attorney General David Spencer. At the conclusion of the

hearing, Judge Benjamin granted the State's motion to dismiss. (App.p.541-p.553). In an Order filed August 20, 2012, Judge Benjamin dismissed Petitioner's PCR application with prejudice, finding Petitioner was precluded from seeking relief pursuant to the bargained for agreement between himself and the State. (App.p.554-p.557). On August 28, 2012, Petitioner filed a motion to reconsider, on August 30, 2012, the State filed a return, and in an Order dated September 19, 2012, and filed October 2, 2012, Judge Benjamin denied that motion. (App.p.558-p.565).

On October 11, 2012, Petitioner filed a notice of appeal with this Court. (App.p.565-p.566). On July 5, 2013, he filed a petition for a writ of certiorari (App.p.567-p.585), and on November 18, 2013, the State filed a return. (App.p.586-p.595). By order dated September 11, 2014, this Court granted the petition and ordered further briefing. (App.p.596). The parties filed briefs arguing their respective positions (App.p.597-636), and in a published opinion filed June 17, 2015, this Court held the PCR court erred in failing to allow Petitioner to present evidence that his waiver of any right to further judicial review, including direct appeal, PCR, or habeas proceedings was entered into upon the advice of constitutionally ineffective trial counsel. This Court remanded the matter to the PCR court "for an evidentiary hearing on the narrow issue of whether [Petitioner] received ineffective assistance of counsel in being advised to enter into the Agreement." (App.p.637-p.642); *Sanders v. State*, 412 S.C. 611, 773 S.E.2d 580 (2015). The Remittitur was issued on July 6, 2015. (App.p.643).

On July 9, 2018, an evidentiary hearing was held in Dorchester County before the Honorable Robin B. Stillwell. Petitioner was present and was represented by Leslie T. Sarji, and the State was represented by Assistant Attorney General Christian Saville. (App.p.644-p.683). In an order dated October 1, 2018, and filed October 17, 2018, Judge Stillwell found that:

"Applicant received ineffective assistance of counsel in being advised to enter into the agreement waiving his right to collateral review of his conviction." (App.p.684). He held: "the 'Contractual Consent Order to Waive Rights to Jury Trial' wherein Applicant waived his right to collateral review of his conviction, including his right to seek post-conviction relief, is invalid," and granted Petitioner a hearing on the merits of his PCR. (App.p.689).

On July 9, 2018, Ms. Sarji filed an amended application for PCR on Petitioner's behalf raising several allegations of ineffective assistance of counsel. (App.p.690-p.691). On May 17, 2021, an evidentiary hearing was held in Orangeburg County before the Honorable Kristi F. Curtis. Petitioner was present and was again represented by Ms. Sarji and Assistant Attorney General Benjamin H. Limbaugh represented the State. (App.p.692-p.771). In an order dated September 1, 2023, and filed September 7, 2023, Judge Curtis granted Petitioner a belated direct appeal but denied relief on the remaining allegations. (App.p.772-p.794). On March 8, 2024, a brief of Petitioner pursuant to *White v. State* was submitted on Petitioner's behalf by Appellate Defender Laua M. Caudy of the South Carolina Commission of Indigent Defense. This Brief of Respondent pursuant to *White v. State* now follows.

STATEMENT OF FACTS

The bench trial began with the parties waiving opening statements. (App.p.250). The State then called witnesses to describe the triple murder committed at the Archdale Forest Apartments in Dorchester County on July 10, 2007, and the ensuing investigation which led to Petitioner's arrest and indictment.

First, the State called two residents from the apartment complex to the stand. Scott Morgan testified he was awoken at around 2:30 a.m. by the sound of gunshots. He subsequently heard a scream and three more shots. (App.p.250-p.252). Matthew Rogers testified he and his

fiancée were in bed watching TV at 2:30 a.m. when he heard a gunshot followed by a scream and three more gunshots. He called 911 and waited for the police to arrive. (App.p.253-p.258). The State then called the two officers from the Dorchester County Sheriff's Office (DCSO) who first responded to the scene. Deputies Adam Smith and Joel Crisp were separately on road patrol when they were dispatched to the apartments as a result of the 911 call. Smith began patrolling in his car when he noticed an apartment door that was partially cracked with a light on inside. He was then joined by Crisp and as they approached the open door, Crisp saw what appeared to be two bodies on the ground inside. Once backup arrived, DCSO officers entered and cleared the apartment. In addition to the two bodies discovered downstairs, they found two small children asleep upstairs. (App.p.259-p.267).

Next, Earl Asbill, the DCSO Lieutenant in charge of the crime scene unit, described responding to the scene to collect evidence. He took photographs of the scene, including photos showing the location of the two bodies, footprints, and shell casings. Asbill then took "gel lifts" from the footprints for future comparison and he collected several .40 caliber shell casings and spent bullets found near the bodies or lodged in nearby walls or furniture. He prepared a diagram of all of his findings and described the numbered items he had identified. Asbill also collected two pairs of "Nike Airs" [Asbill clarified on cross-examination the shoes in question were Nike "Air Force Ones"] belonging to one of the victims for comparison purposes because they had the same type of pattern as the footprint from the crime scene. (App.p.267-p.281)

Asbill explained that later in the morning he was notified that a third body, that of a partially nude female was located outside behind a nearby apartment. He took additional photographs from this second location showing the specific location of the body and other evidence that was discovered, including clothing, footwear impressions, .40 caliber shell casings,

and spent bullets found under the body. Asbill also did gun-shot residue (GSR) kits on the hands of all three victims. He attempted to lift fingerprints from the shell casings discovered but no prints appeared. (App.p.282-p.288).

Asbill described how the shell casings from the scene were taken to the Charleston County Police Department and placed into IBIS [the International Ballistics Identification System] for comparison, which resulted in a match to a gun used in two other recent shootings in the area. Asbill described executing a search warrant of Petitioner's residence on July 24, 2007, fourteen days after the crime. He explained they were looking for footwear, a weapon, bullets, ammunition, or anything else that might link Petitioner to the crime. Asbill's team found several pairs of Nike Air Force shoes which had tread patterns consistent with the prints from the scene, as well as several .40 caliber bullets, and a safe which was removed from the house. He took photographs of the items and took them into evidence. Asbill testified they collected three .40 caliber bullets identical to the shell casings from the crime scene, at least as far as the manufacturer and head stamps. They also collected four pairs of Petitioner's Nike Air Force Ones, an ammo box, and a safe, which was later opened by a locksmith. Inside the safe they found newspaper clippings about the triple homicide, an arrest warrant, and several other photographs and papers. (App.p.288-p.306). Asbill finally testified he was aware that an oral swab of the female victim found outside was collected by the pathologist at MUSC [Medical University of South Carolina], and following Petitioner's arrest a court order was secured to take his DNA sample for comparison. (App.p.306-p.308).

The State then called DCSO Major John Garrison, the lead detective, to the stand. Garrison testified that early in the investigation they did not have a suspect because the shooter was no longer at the scene and there were no eyewitnesses. He said the first lead came from

ballistic evidence and the IBIS match between the shell casings from the scene and a shooting in North Charleston at the Anchor Bar. Garrison explained there was a witness in that shooting—a bouncer named [Reginald] Chavers who was brought in for an interview and provided a statement including a physical description of the man who fired a handgun during the incident. Chavers indicated he could identify the shooter. Shortly thereafter, DCSO developed Petitioner as a suspect, so they asked Chavers to come for a second interview, at which point he identified Petitioner from a photo lineup. (App.p.322-p.329). Garrison next testified that when Petitioner was arrested for the crimes he was with his girlfriend, Madea Thompson, and that prior investigation had determined Thompson lived in the apartment building next to where the third homicide victim was discovered. Finally, Garrison testified that after arresting Petitioner and advising him of his rights, Petitioner made two incriminating comments. Petitioner: (1) stated that one day he would like to tell Garrison what actually happened if Garrison would take him out to dinner, and (2) asked if Garrison "still wanted the gun." (App.p.329-p.333). Officer Karen McDonald of the North Charleston Police Department then described responding to the Anchor Bar incident and interviewing Chavers. (App.p.346-p.350).

Next, the State presented a series of forensic witnesses. SLED Agent Vickie Hallman of the latent print crime scene unit was admitted as an expert in forensic footwear analysis comparison. She compared the gel lifts from the crime scene with both the four pairs of Air Force Ones taken from Petitioner's house (State's Exhibits 60, 61, 62, & 67) and two pairs of Air Force Ones belonging to the male victim (State's Exhibits 57 & 58). She eliminated the victim's shoes as having made the prints at the crime scene due to their size, and opined Petitioner's shoes matched in combined class characteristics of size, shape, and tread design. (App.p.352-p.364).

SLED Agent Katie Coy of the DNA department was admitted as an expert in forensic serology and DNA analysis. She testified that semen was identified in the oral swab taken from the mouth of the outside victim and that DNA was extracted and compared to a DNA sample obtained from Petitioner. Coy testified the partial DNA profile developed from the semen matches the DNA profile of Petitioner, and that the probability of randomly selecting an unrelated individual having a DNA profile matching the semen is approximately one (1) in two-hundred and sixty (260) (App.p.368-p. 375).

SLED Agent Tracy Thrower of the firearms department was admitted as an expert in firearms and toolmark identification. He compared the .40 caliber shell casings from the crime scene to the .40 caliber shell casings from the Anchor Bar incident and testified "that all the cartridge cases I received . . . were fired by one firearm to a degree of scientific certainty that the likelihood that another firearm could have produced this style making is so rare, it would be considered a practical impossibility." (App.p.382-p.394).

Next, the State called Reginald Chavers, the bouncer from the Anchor Bar, testified that the shooting that occurred in the early morning hours of March 4, 2007. Chavers testified that in his capacity as a bouncer, he removed an individual from the bar and asked him to leave the premises. The man he removed then walked across the street and got into the rear passenger seat of a pickup truck, when suddenly eight shots were fired from two different windows of the truck. Chavers said the man had been directly in front of him when they spoke, in good lighting, with nothing over his face to hide his identity, and that he saw the same man fire a handgun from the back passenger window of the truck. Chavers gave a description of the person to the police and later returned and was able to identify him from a photo lineup. He testified there was no doubt

in his mind that the photo he selected was the man who fired the shot from the truck and he made a courtroom identification of Petitioner as that man. (App.p.407-p.415; p.418-p.419).

The State then called Petitioner's friend, Richard Alexander, to the stand. Alexander testified Petitioner was a good friend of his, that he sometimes let Petitioner borrow his pickup truck, and that Petitioner had borrowed it twenty to twenty-five times since they had known each other. Alexander further testified that in the early part of 2007 he purchased a .40 caliber Smith and Wesson from a friend and kept that gun as well as an ammo box containing .40 caliber ammunition in his truck. He said that sometime after Petitioner was arrested for the murders, he noticed the .40 caliber gun and ammo box were no longer in his truck. Alexander finally testified that after he learned about the murders, there was an occasion when Petitioner asked if Alexander knew anything about DNA. (App.p.418-p.429).

Next, Dr. Cynthia Ana Schandl, assistant professor of forensic pathology at the Medical University of South Carolina, took the stand to describe the autopsies she performed on the three victims, Diane Grant (female, age 44), Jatavius Devore (male, age 20), and Deanna Devore (female, age 15). Dr. Schandl described the injuries they suffered in great detail and testified that their deaths were caused by the gunshot wounds they suffered on the night of the incident. (App.p.440-p.456).

Finally, the state called DCSO detective Timothy Morgan to the stand to describe his investigation into cell phone records obtained from Petitioner and others who were possibly related to the case, including Petitioner's friend, Xavier Walker. Morgan testified Petitioner was frequently on his phone during the early morning hours on the day of the murders, making multiple short phone calls between 1:41 a.m. and 2:06 a.m. before there being an eighteen-minute gap from 2:06 a.m. until 2:24 a.m. Morgan noted the 911 calls about the gunshots started

coming in at 2:24 a.m., that Petitioner's next phone call after the eighteen-minute gap was also at 2:24 a.m., and that the call was placed to his girlfriend Madea Thompson, whose back porch is ten yards or less from the location where the third victim was found. Morgan testified that after the shootings Petitioner made several lengthy calls, one to a girlfriend in Goose Creek and another to a girlfriend in Roanoke, Virginia. He testified that based on the cell-phone towers carrying those calls, Petitioner was close to the crime scene at 2:24 a.m. and then appeared to be moving southeast in the general direction of his mother's apartment, where he lived. Morgan said the individuals on the receiving end of Petitioner's calls confirmed they had indeed been talking to him on the night in question. (App.p.458-p.470; p.478-p.480).

At the conclusion of Morgan's testimony, the State rested. After consulting with his attorneys, Petitioner advised the court he was not going to testify and the defense rested. Petitioner was questioned by the court to ensure his decision was freely, voluntarily, knowingly, and intelligently entered with the advice of competent counsel and then the parties proceeded to closing arguments. Those closing arguments focused on whether the State had carried its burden of proving Petitioner committed the murders beyond a reasonable doubt. (App.p.483-p.507). After closing arguments, the trial court asked if there was anything else from the defense. Petitioner's counsel replied: "No, your honor," and the judge took a recess to review the evidence. (App.p.507). Judge Dennis retired to chambers to deliberate and later returned to announce: "After considering all of the arguments and reviewing the evidence, I find that the defendant is guilty of all three murders and have written that accordingly." (App.p.507, lines 17-20). The court then heard from a representative of the victim's family and the parties before sentencing Petitioner to three concurrent terms of imprisonment of life without parole. (Sentencing Sheets; App.p.507-p.516).

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). When ruling on a motion for a directed verdict, the trial court is concerned with the existence or non-existence of evidence, not its weight. *State v. Phillips*, 416 S.C. 184, 192, 785 S.E.2d 448, 452 (2016); *State v. Curtis*, 356 S.C. 622, 633, 591 S.E.2d 600, 605 (2004); *State v. Condrey*, 349 S.C. 184, 190, 562 S.E.2d 320, 323 (Ct. App. 2002). When the evidence presented merely raises a suspicion of the accused's guilt, the trial court should not refuse to grant the directed verdict motion. *Phillips*, 416 S.C. at 192, 785 S.E.2d at 452; *State v. Cherry,* 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004). However, the trial court must view the evidence in the light most favorable to the State when ruling on a motion for directed verdict, 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." *Phillips*, 416 S.C. at 192-93, 785 S.E.2d at 452 (*quoting State v. Mitchell,* 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000); *State v. Littlejohn,* 228 S.C. 324, 328, 89 S.E.2d 924, 926 (1955) Indeed, "the lens through which a court considers circumstantial evidence when ruling on a directed verdict motion is distinct from the analysis performed by the jury." *State v. Bennett*, 415 S.C. 232, 236, 781 S.E.2d 352, 354 (2016). The jury's focus is on determining whether every circumstance relied on by the State is proven beyond a reasonable doubt, and that all of the circumstances be consistent with each other and, taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis. *Phillips*, 416 S.C. at 193, 785 S.E.2d at 452; *Littlejohn*, 228 S.C. at 329, 89 S.E.2d at 926.

While "the *jury* must consider alternative hypotheses, the *court* must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt." *Bennett*, 415 S.C. at 237, 781 S.E.2d at 354. The reviewing court should affirm if in viewing the

evidence in the light most favorable to the State, "the evidence could induce a reasonable juror to find [the defendant] guilty." *See State v. Pearson*, 415 S.C. 463, 474, 783 S.E.2d 802, 808 (2016); *see also State v. Richburg*, 250 S.C. 451, 459, 158 S.E.2d 769, 772 (1968) ("When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury.").

ARGUMENT

I.

The trial court properly elected not to direct a verdict of acquittal because the State presented substantial circumstantial evidence from which the fact finder could fairly and logically find Petitioner guilty of the three counts of murder.

Petitioner argues "the trial judge erred by denying [his] motion for a directed verdict when the state failed to present any direct or substantial circumstantial evidence [he] shot the decedents" and claims the evidence merely raised a suspicion he was involved in the murders. (Brief of Petitioner, p.9). The State disagrees and submits this argument should be denied and dismissed for several reasons. First, the issue is not preserved for appellate review because Petitioner neither moved for a directed verdict nor stated any specific grounds in support of such a motion at trial. Second, even if preserved, the issue is without merit because the State presented substantial circumstantial evidence from which the fact finder could fairly and logically find Petitioner guilty of each element of the murders, based on the natural and logical inferences to be drawn from the evidence, including that Petitioner was present at the scene and fired the shots that killed the three victims.

There is no dispute that the victims were murdered when they were shot at close range with a .40 caliber handgun. The State presented evidence that Petitioner had access to a .40

caliber handgun like the one used in the murders, that Petitioner had fired a .40 caliber handgun in a prior shooting incident, and that the exact same .40 caliber handgun was used in both. The State also presented evidence that Petitioner's DNA matched, to a significant degree of mathematical probability, the DNA profile developed from semen discovered in the fifteen-year old victim's mouth, and that Petitioner's shoes (but not the male victim's shoes) matched shoeprints found at the scene. Finally, evidence was presented that after the murders Petitioner made incriminating statements to the police and to one of his close friends, and that he had made cell phone calls in physical and temporal proximity to the murders. He also had copies of newspaper clippings about the murders in a safe he kept in his bedroom. These pieces of circumstantial evidence constituted strong evidence of Petitioner's guilt for the murder of the three victims. Accordingly, viewing the evidence in a light most favorable to the State and focusing on the existence of evidence and not its weight, the trial judge correctly elected not to direct a verdict of acquittal and instead considered the case as the fact-finder to allow for proper resolution of any factual disputes created by the evidence and testimony. Petitioner's convictions and sentence should be affirmed.

Argument not Preserved for Appeal

In order for an issue to be preserved for appellate review, the issue must have been: (1) raised to and ruled upon by the trial court; (2) raised by the Petitioner; (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, 912-13 (Ct. App. 2004). "If a party fails to properly object, the party is procedurally barred from raising the issue on appeal." *State v. Johnson*, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005).

Our issue preservation requirements apply in the context of motions for a directed verdict. *See State v. Williams*, 439 S.C. 620, 622-23, 889 S.E.2d 562, 563 (2023) (finding the Petitioner failed to preserve the issue of whether the doctrine of transferred intent applies to specific intent crimes because he never asserted there was insufficient evidence of intent or claim the doctrine of transferred intent did not apply to attempted murder as grounds for his directed verdict motion). This is true even where the defendant elects to have a bench trial rather than a trial by jury. *See State v. Wharton*, 263 S.C. 437, 441, 211 S.E.2d 237, 239 (1975) (recognizing the Petitioner made a timely motion for a directed verdict during his bench trial when addressing the issue on appeal), *overruled on other grounds by State v. Evans*, 307 S.C. 477, 415 S.E.2d 816 (1992); *State v. Griffin*, 413 S.C. 258, 262, 776 S.E.2d 87, 89 (Ct. App. 2015) (noting, in reviewing an appeal from a bench trial, that after the State rested Petitioner moved for a directed verdict), *aff'd as modified*, 416 S.C. 266, 785 S.E.2d 786 (2016); *but see State v. Taylor*, 338 S.C. 624, 626, 527 S.E.2d 395, 396 (Ct. App. 2000) (rejecting the State's argument that the directed verdict issue was not preserved for appellate review because Petitioner failed to move for a directed verdict during his "stipulated fact bench trial").

Here, Petitioner did not make a motion for a directed verdict after the State rested. He also did not move for a directed verdict after the defense rested. Instead, the parties proceeded immediately into closing arguments without Petitioner ever mentioning the term "directed verdict" or arguing he believed there was insufficient evidence of any element of murder to send the case to the factfinder for a determination of guilt. (App.p.483-p.507). Indeed, rather than ever arguing the State had failed to meet the evidentiary standard the court should apply for the grant or denial of a directed verdict, Petitioner began his closing argument by saying: "And the State must convince you beyond a reasonable doubt, to the exclusion of other evidence, that it

was [Petitioner] who committed these murders." (App.p.495, line 5-13). Petitioner then wrapped-up his closing argument by saying: "[The State] must show to us that the individual they want to put in prison for the rest of his life is the person who committed the murder. And that [the State] must show it beyond a reasonable doubt. . . . I would ask the Court, after full consideration of all these facts, to find that the State has failed to meet its burden and return a verdict of not guilty as to all three of these indictments." (App.p.506, line 9-p.507, line 3). After closing arguments, the trial court asked if there was anything else from the defense. Petitioner replied: "No, your honor." (App.p.507). Unlike in *Taylor*, this was not a situation where Petitioner stipulated to the facts. Instead, Petitioner's cross-examination of State witnesses and closing argument show the facts were very much in dispute. By failing to move for a directed verdict at trial, the argument Petitioner now attempts to raise is not preserved for consideration in this appeal and should be dismissed. *Rogers* at 183, 603 S.E.2d at 912-13; *State v. Williams* 266 S.C. 235, 335, 223 S.E.2d 38, 43 (1976). In any event, the argument is without merit.

Discussion

"Murder" is the killing of any person with malice aforethought, either express or implied. S.C. Code Ann. § 16-3-10 (2007). This Court has long recognized that guilt of murder can be established by purely circumstantial evidence. *See State v. Grippon*, 327 S.C. 79, 81, 489 S.E.2d 462, 462 (1997) (noting the state relied on circumstantial evidence to prove malice). As noted above, the trial court must submit a circumstantial evidence case to the finder of fact, rather than grant a directed verdict, 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. *State v. Brazell*, 325 S.C. 65, 77, 480 S.E.2d 64, 71 (1997). Thus, when there is adequate proof of the corpus delicti of murder—that someone died by the criminal agency of another—absent evidence of the

guilt of the particular defendant, his conviction cannot stand. *State v. Martin*, 340 S.C. 597, 533, S.E.2d 572 (2000). Therefore, to withstand Petitioner's directed verdict motion in the trial of this case, the State was required to produce evidence that Petitioner killed the victims with malice aforethought, either express or implied. Petitioner does not contest that the evidence proves the victims were murdered—he only claims that it does not sufficiently prove that he was the person who committed those murders.

Yet here, there was a veritable mountain of circumstantial evidence that Petitioner was the person who killed the three victims with malice aforethought by intentionally shooting each of them to death with a .40 caliber handgun. In regard to the murder itself, two residents from the apartment complex where the murders occurred heard multiple gunshots and a scream around 2:30 a.m. on July 10, 2007, shortly before the bodies of the first two victims were discovered on the floor of the apartment by the police. (App.p.250-p.258). The pathologist determined that all three victims died from perforating close-range gunshot wounds. Diane Grant was shot once, Jatavius Devore was shot twice, and Deanne Devore, who was found partially nude outside the apartment a short distance away from the other two victims, was shot four times. (App.p.440-p.456). The State's theory was that Petitioner was sexually assaulting Deanne when her brother and mother either walked in on the assault or woke up to find Petitioner in the apartment assaulting Deanna. The State theorized that Petitioner first shot and killed Diane and Jatavius, but that Deanne was able to flee from the scene before Petitioner chased her down and killed her behind the apartment building. (App.p.487-p.488).

In regard to Petitioner being the shooter, and taken in the light most favorable to the State, the following reasonable inferences flowed from the evidence introduced at trial. First, at

the time of the murders, Petitioner had a .40 caliber handgun and .40 caliber ammunition he obtained from his friend's truck. (App.p.418-p.429). Second, Petitioner had fired a .40 caliber handgun at a bouncer from a local bar three months prior to the murders. (App.p.407-p.415; p.418-p.419). Third, the exact same .40 caliber handgun that Petitioner fired at the bouncer was later used to murder the three victims. (App.p.382-p.394). Fourth, Petitioner made almost constant phone calls from his cell phone both before and immediately after the murders, but he made no calls for the eighteen minutes leading up to the murders, and then called his girlfriend right after the last shots were fired, from a location at or near the scene of the crime. (App.p.458-p.470; p.478-p.480). Fifth, Petitioner ejaculated in fifteen-year-old Deanne Devore's mouth shortly before she was murdered (App.p.368-p. 375), and then after his arrest he showed concern about possible forensic evidence which might tie him to the crimes when he asked his friend if he knew anything about DNA. (App.p.418-p.429). Sixth, Petitioner left shoeprints from his Nike Air Force Ones at the murder scene. (App.p.352-p.364). Finally, Petitioner was keeping newspaper clippings from the murders in his safe (App.p.301-p.302) and he made statements to the police indicating he had knowledge of what happened at the murder scene and the location of the gun used in the murders. (App.p.329-p.333).

Viewing all of the evidence presented in a light most favorable to the State as required, and considering only its existence and not its weight, the evidence established Petitioner's guilt for the murders and required the trial judge to consider the case as the finder of fact rather than directing a verdict of acquittal. Based on the logical and reasonable inferences to be drawn from this evidence, the fact finder could convict Petitioner of three counts of murder. Furthermore, the questions as to whether the evidence presented supported an inference of guilt and what weight should be assigned to that evidence rested solely with the judge as the factfinder.

Therefore, the trial judge properly considered the case on its merits to resolve any of the factual disputes raised by the evidence and the inferences to be drawn from it. Petitioner's arguments improperly focus on the weight of the evidence as opposed to its existence, but the weight of the evidence is not an appropriate consideration for the trial judge when reviewing a directed verdict motion.

In Petitioner's case, the factual issues raised by the evidence could only appropriately be resolved by the fact finder. *See State v. Vanderhorst*, 257 S.C. 114, 117, 184 S.E.2d 540, 541 (1971) ("When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury."). Contrary to what is required before a directed verdict should be granted, Petitioner's case did not present a complete failure of evidence of his guilt. *See State v. Brown*, 205 S.C. 514, 520, 32 S.E.2d 825, 827 (1945) ("Where there is any evidence, however slight, on which the jury may justifiably find the existence or the non-existence of material facts in issue, or if the evidence is of such character that different conclusions as to such facts reasonably may be drawn therefrom, the issues should be submitted to the jury."). Instead, substantial circumstantial evidence of Petitioner's guilt for murder was presented. Therefore, the trial judge properly elected not to direct a verdict in Petitioner's favor, and Petitioner's convictions should be affirmed.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the convictions and sentences of the lower court as to Petitioner be affirmed.

Respectfully submitted,

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