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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County
Honorable Frank R. Addy, Jr., Circuit Court Judge
Appellate Case No. 2023-000501

THE STATE,

Respondent,

vs.

SCOTTY JOE FOWLER

Appellant.

FINAL BRIEF OF RESPONDENT

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Did the trial judge somehow err by declining to grant a directed verdict when the evidence and testimony presented during trial supported a rational and logical conclusion Appellant was guilty of all the required elements of attempted murder and possession of a weapon during the commission of a violent crime?

STATEMENT OF THE CASE

In April of 2021, Appellant Scotty Joe Fowler was arrested following an investigation that began after his girlfriend was shot in the head inside their shared home. In January of 2022, the Greenwood County Grand Jury indicted Appellant for attempted murder and possession of a weapon during the commission of a violent crime. On February 27, 2023, a jury trial was commenced in the Greenwood County Court of General Sessions with the Honorable Frank R. Addy, Jr., circuit court judge, presiding. At the conclusion of the multi-day trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to consecutive terms of imprisonment of fifteen years for attempted murder and five years for possession of a weapon during the commission of a violent crime. Thereafter, Appellant timely filed a post-trial motion, and the State filed a response opposing that motion. Through an order dated March 21, 2023, the trial judge denied Appellant's post-trial motion. Appellant then timely filed a notice of appeal.

ARGUMENT

The trial judge correctly declined to grant a directed verdict because the evidence and testimony presented during trial supported a rational and logical conclusion Appellant was guilty of all the required elements of attempted murder and possession of a weapon during the commission of a violent crime.

Relevant Facts

Around 10:27 p.m. on April 13, 2021, Lesa Speir called 911 and reported she had just arrived home at her trailer located in a rural area of Greenwood. (R. p. 22; p. 45; p. 134; p. 146; State's Ex. # 1 (911 Call Recording)). When she arrived there, Speir frantically explained her "godson"—Appellant—came running out of the trailer and said his girlfriend had been shot. (R. p. 27; State's Ex. # 1). In response, the 911 operator quickly dispatched law enforcement officers and other emergency personnel to Speir's residence. (R. pp. 24-25; State's Ex. # 1).

While the first responders were on their way, the 911 operator continued talking to Speir to try to find out what had occurred and to provide instructions on how to assist the victim, Joye Matthews ("Victim"), until help could arrive. (R. p. 27; pp. 147-148; State's Ex. # 1). During that conversation, Appellant—through Speir—alternately claimed either he dropped his gun or his gun fell when he was emptying out his pockets and "it" hit Victim. (State's Ex. # 1). Appellant further claimed the shooting had just happened and Victim had been shot in the head above her temple. (State's Ex. # 1).

Within minutes, Deputy Jacob Turner of the Greenwood County Sheriff's Office arrived at the scene and quickly entered the trailer.[1] (R. pp. 43-45; p. 50; pp. 72-73; State's Ex. # 2 (Body Camera Recording)). Inside, he found Victim lying on the floor near the trailer's door with Appellant holding a cloth to the back of her head. (R. pp. 46-48; p. 71; State's Ex. # 2). In

[1] By the time of Appellant's trial, Deputy Turner was working for the Abbeville County Sheriff's Office. (R. p. 43).

addition to that, he spotted a silver .22-caliber revolver a few feet away from Victim and a cell phone on the floor nearby. (R. p. 47; p. 57; p. 213; State's Ex. # 2). At that point, Deputy Turner directed Appellant—who alleged to the deputy he dropped his gun, it struck the side of the coffee table, and it went off—to exit the trailer.[2] (R. pp. 46-47; p. 54; pp. 76-77; State's Ex. # 2). Deputy Turner then began rendering aid to Victim until paramedics arrived. (R. pp. 46-47; State's Ex. # 2).

A short time later, emergency medical personnel arrived at the scene and took over the provision of treatment to Victim. (R. pp. 29-30; p. 33). However, due to the life-threatening nature of Victim's gunshot wound, the paramedics rapidly determined Victim needed to be transported from the scene for more advanced care, and she was swiftly taken to a hospital in Greenville via helicopter. (R. pp. 34-35; pp. 37-38; p. 40; p. 235).

Upon arriving at the hospital, Victim was rushed into surgery. (R. p. 175; pp. 177-178; pp. 186-187). At that time, Victim's condition was dire, her level of brain functioning was very low, and her chances of survival were believed to be just 5%. (R. pp. 179-180; p. 196). Fortunately though, Victim miraculously survived. (R. p. 204).

Meanwhile, as Victim was being rushed to and receiving treatment at the hospital, the investigation into the shooting progressed at the scene, and, as part of it, Deputy Dawn McGuire from the Greenwood County Sheriff's Office spoke with Appellant about what had supposedly occurred. (R. pp. 74-77; pp. 84-85; State's Ex. # 3 (Body Camera Recording)). During their conversation, Appellant claimed he entered the trailer after smelling a "burn smell" and he emptied his pockets after encountering Victim inside. (R. p. 81; State's Ex. # 3). At that point,

[2] Tellingly, there did not appear to be any marks or scuffs on the corner of the coffee table where the gun was supposedly dropped. (R. pp. 58-59).

Appellant repeated his earlier claim he dropped his revolver, the "hammer part" of the gun hit the corner of the table, and the gun fired, striking Victim. (R. p. 81; State's Ex. # 3).

Notably, while providing his account to Deputy McGuire, Appellant physically gestured like the gun had fired *upward* into the air, and he further demonstrated removing the gun from his right pocket. (R. pp. 81-82; State's Ex. # 3). However, the gun's holster was in Appellant's left pocket. (R. p. 82; State's Ex. # 3). Upon realizing that, Appellant, who was right-handed, shifted his account and began claiming he had actually pulled the gun from his left pocket. (R. pp. 82-83; State's Ex. # 3).

Later that night, Lieutenant Michael Murdock of the Greenwood County Sheriff's Office had two separate conversations with Appellant about the shooting. (R. pp. 297-301). During the first, Appellant claimed he was in the living room with Victim, he went to take his gun out of his pocket to place it on the coffee table, the gun slipped when he did so, it discharged, and the bullet struck Victim.[3] (R. p. 301). During the second, Appellant largely repeated his claim but, at one point, inconsistently asserted he was actually going to put the gun on the home's entertainment center instead of the coffee table. (R. p. 301; p. 309; pp. 330-331). Moreover, Appellant was unable to provide clear explanations as to how the gun had struck the furniture or why the truck parked outside the trailer had its driver's door open and lights on.[4] (R. p. 61; p. 312; p. 319). Believing the provided account did not make sense, Lieutenant Murdock arrested Appellant in connection to the shooting. (R. p. 312).

[3] As to why he was armed with a gun that night, Appellant claimed he had seen a roughly-one-foot-long black snake in the backyard. (R. p. 310; State's Ex. # 3).

[4] Notably, the truck's key was in its ignition, a cell phone was resting on its driver's seat, and there were three bags of clothing and other items positioned next to it. (R. pp. 239-241).

Following his arrest, Appellant was subsequently 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. 2; pp. 507-510). During trial, the deputies and other personnel involved in the response to the shooting detailed what occurred that night, including concerning Appellant's accounts of how the shooting occurred. (R. pp. 29-89; pp. 206-219; pp. 233-283; pp. 297-331; pp. 333-351). Likewise, the 911 call recording, several body camera recordings depicting Appellant's various accounts of the shooting, numerous photographs from the crime scene, and scans showing Victim's extensive brain injuries were admitted into evidence and presented to the jury. (R. p. 23; pp. 51-52; pp. 78-79). In addition to that, testimony was presented establishing a DNA profile developed from a swab collected from the revolver's handle constituted a mixture from two individuals and, significantly, it was 14,000,000,000,000,000,000,000,000,000 times more likely if Victim and Appellant contributed to that mixture than if two unknown individuals had done so. (R. pp. 360-364).

Additionally, although unable to remember being shot due to her brain injuries, Victim testified about her relationship with Appellant along with what she could remember. (R. pp. 105-132). Specifically, Victim explained their relationship was *not* a "happy" or "good" one, they argued and fought on a daily basis, and she was frightened of Appellant. (R. pp. 108-109; p. 112; p. 120). Victim further explained Appellant "always" carried a gun and fired it frequently outside the home, including into the back of the trailer sometimes.[5] (R. pp. 109-112). Importantly, Victim also recounted Appellant threatened her in the days leading up to the incident, directly stated to her he was *going to kill her*, and warned her no one could have her if

[5] Multiple bullet holes were found in the trailer during the investigation into the shooting. (R. pp. 268-275).

he could not. (R. pp. 112-114). Similarly, Victim reported Appellant had put a gun to her head in the past.[6] (R. p. 124).

Consistent with Victim's testimony, Speir confirmed Appellant and Victim frequently fought and argued with one another and Victim had grown to become terrified of him. (R. pp. 138-139). She further confirmed Appellant was routinely armed with a gun and regularly fired it around the residence. (R. p. 139; p. 141; p. 160). In addition to that, Speir verified she was not home at the time of the shooting and, instead, had been alerted of it by Appellant, who—when she arrived home that night—was sitting inside her truck *listening to music* with the engine running and the lights on, ran into the trailer through the back door when he witnessed her return, and then came back out the front door shouting about the "accidental" shooting.[7] (R. pp. 142-145; pp. 153-154; p. 156; pp. 169-170).

Furthermore, Dr. Charles Kanos, the expert neurosurgery chief at the hospital in Greenville, recounted the details of his treatment of Victim after the shooting. (R. pp. 173-204). More specifically, Dr. Kanos explained he determined through his treatment the bullet entered Victim's skull near the top of her head roughly three inches above her left ear, travelled in a *downward* trajectory toward the back of her head, crossed through her brain's midline, and lodged in the right side of her brain, leaving bullet fragments along the way. (R. pp. 183-188; pp. 190-192; p. 197). As would be expected from such on occurrence, Dr. Kanos confirmed Victim was lucky to be alive and her injuries could have been fatal. (R. p. 196; p. 204). Moreover, he opined the damage to Victim's brain could result in speech and memory problems amongst other issues. (R. pp. 196-197).

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[6] According to Victim, Appellant had also put a gun to his own head at some point. (R. p. 124).

[7] The truck at the scene belonged to Speir, but she indicated Appellant—and Victim—sometimes used it without her permission. (R. p. 144; p. 168).

Beyond that, Paul Greer, an expert firearm examiner from SLED, testified about his examination of the revolver with which Victim was shot. (R. p. 372; pp. 374-375). Greer explained that revolver was double-action and had an internal safety.[8] (R. pp. 377-378; p. 387). Greer further explained he—as part of his examination of the gun—struck the revolver multiple times with a plastic-tipped mallet to see if it was possible to get it to fire without a trigger pull but was not able to fire it in that manner. (R. p. 386). Likewise, Greer indicated he also put the gun's hammer in a cocked position and struck the back of the hammer with the plastic-tipped mallet. (R. pp. 386-387). Significantly, he explained he was able to get the gun's hammer to fall by doing so but its internal safety prevented a shot from being fired. (R. p. 387). Thus, Greer confirmed a trigger pull was necessary for the revolver to be fired. (R. p. 387; p. 392).

Following the presentation of all that testimony and evidence, the solicitor rested the State's case, and defense counsel promptly moved for a directed verdict. (R. pp. 393-394). As support for that motion, defense counsel argued the State had supposedly failed to produce substantial circumstantial evidence of Appellant's guilt for attempted murder. (R. p. 394). More specifically, defense counsel—while citing to the unrelated appellate decisions in State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011); State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004); and State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000)—maintained all that had been presented was Appellant and Victim "had a hostile or not great relationship," a gun was fired, and Appellant then lied about what had occurred, which he alleged was purportedly sufficient only to raise a mere suspicion of guilt. (R. pp. 394-396). Conversely, the solicitor contended the evidence and testimony presented demonstrated Appellant threatened to kill Victim in the days leading up to the shooting, had put a gun to her head in the past, and then provided a false

[8] With a double-action revolver, the gun's hammer can be cocked either manually or with a trigger pull. (R. pp. 377-378).

account of what occurred since his claim regarding the gun firing after being dropped was not possible and the bullet trajectory was inconsistent with what he claimed happened. (R. p. 398). Based on all that taken together, 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. p. 398).

Upon considering the arguments of counsel, the trial judge declined to grant a directed verdict. (R. pp. 398-399). In so declining, the trial judge concluded the physical evidence and testimony presented collectively constituted substantial circumstantial evidence warranting submission of the case to the jury. (R. pp. 398-399; p. 401). And, as support for his conclusion, the trial judge noted Appellant made threats toward Victim prior to the shooting and had then provided a demonstrably false and shifting account of how that shooting occurred. (R. pp. 401).

Following the trial judge's ruling, the defense rested without offering any testimony or evidence. (R. p. 405). Thereafter, the parties presented their closing arguments to the jury, and the trial judge instructed the jury on the applicable law.[9] (R. pp. 407-480). The case was then submitted to the jury, and, after deliberating on the matter for just under an hour, the jury unanimously convicted Appellant as indicted. (R. pp. 482-483).

Subsequent to that, defense counsel moved for—amongst other things—a new trial. (R. pp. 511-513). In seeking such relief, defense counsel alleged "the evidence merely raised a suspicion that [Appellant] intentionally assaulted the alleged victim" and "there [wa]s absolutely no evidence of [Appellant]'s specific intent." (R. p. 513). The State opposed the motion. (R. pp. 514-517). After considering the matter, the trial judge declined to grant a new trial while

[9] As part of his jury instructions, the trial judge instructed the jury on the law of accident and specifically explained "[t]he burden [wa]s on the State to prove beyond a reasonable doubt that the act was not an accident but was caused by an intentional act of the defendant." (R. p. 475).

reaffirming his earlier ruling sufficient evidence was presented during trial to establish Appellant's guilt for the charged offenses. (R. pp. 518-519).

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 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 sub judice, Appellant contends the trial judge erred by refusing to grant a directed verdict as to both attempted murder and possession of a weapon during the commission of a violent crime. As support for that contention, Appellant—while primarily relying upon sufficiency-of-the-evidence findings in other unrelated cases[10]— maintains there supposedly "was not substantial circumstantial evidence of guilt" presented in his case because: (1) "[t]he mere fact that the story told by [him] was not supported by physical evidence [wa]s not itself sufficient to find that he shot [Victim] with specific intent to kill;" and (2) "[a]lthough the [S]tate brought up prior threats allegedly made by [him], they provided no evidence tying those threats to the shooting that night." To the contrary, the evidence and testimony presented during trial—when viewed in a light most favorable to the State as required—reasonably tended to prove Appellant's guilt for the indicted offenses of attempted murder and possession of a weapon during the commission of a violent crime. Therefore, the trial judge correctly declined to grant a directed verdict and properly submitted the case to the jury.

[10] Notably, due the "necessarily fact-intensive" nature of a directed verdict analysis, our Supreme Court has recognized appellate holdings on directed verdict issues generally "are limited to their peculiar facts." See Bennett, 415 S.C. at 237 n. 1, 781 S.E.2d at 354 n. 1 ("Bennett argues the evidence in his case is more tenuous than in State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004), and State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011), where this Court reversed the denials of a directed verdict. We recognize in this area of ever-evolving jurisprudence our inquiry is necessarily fact-intensive; therefore, the holdings in those cases are limited to their peculiar facts."). Therefore, Appellant's reliance on the unrelated cases is misplaced.

Demonstrating that fact, the evidence and testimony presented during trial indisputably established Victim was shot *in the head* with a gun during the incident, and, critically, the gun that fired the bullet into her head could *only* be fired with a pull of its trigger based on the expert testimony presented.[11] Thus, since the evidence and testimony presented supported a rational and logical conclusion whoever shot Victim in the head had to have done so in an intentional manner by pulling the trigger of the revolver, the jury could have reasonably inferred the shooting 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."); 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). Resultantly, sufficient evidence was presented during Appellant's trial from which the jury could rationally and logically find Appellant guilty of all the required elements of attempted murder *if* Appellant was the one who shot Victim.

[11] In fact, fragments of the bullet itself were still inside Victim's skull at the time of trial, and images were introduced into evidence depicting those fragments. (R. p. 184; pp. 191-192).

And, regarding Appellant's identity as the person who shot Victim, substantial evidence was presented from which the jury could logically and rationally conclude he was, in fact, the shooter. First, Appellant—by his own admission—was present at the scene at the time of the shooting and was in possession of the revolver just before Victim was shot with it. See Commonwealth v. Boyd, 344 A.2d 864, 867 (Pa. 1975) ("[W]here it is established that the accused had sole control over the weapon at the time of its discharge and that the weapon was used upon a vital part of the body, a jury could properly infer malice sufficient to sustain the charge of murder."). Second and more importantly, testimony was presented establishing Appellant had both personally threatened to kill Victim in the days leading up to the shooting *and* had actually put a gun to her head in the past, which—as has long been recognized—was powerful evidence of Appellant's hostile state of mind and harmful intent concerning Victim. See Blakely v. State, 360 S.C. 636, 639, 602 S.E.2d 758, 759 (2004) ("It is *well-settled* that evidence of previous threats by the defendant is admissible to show malice." (emphasis added)); State v. Lee, 255 S.C. 309, 316, 178 S.E.2d 652, 655 (1971) ("The general rule is that evidence of previous threats and hostile declarations by the accused against the deceased is admissible to show malice, premeditation and state of mind[.]"), overruled on other grounds by State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009); see also Castillo-Campos v. United States, 987 A.2d 476, 487 (D.C. 2010) ("Evidence that there was animosity between the accused and the victim and that the accused targeted the weapon at a particularly vulnerable area of the body is sufficient evidence for a jury to find all of the elements of [an offense requiring proof of an assault made with specific intent to kill]."); cf. Thompson v. State, 757 S.E.2d 846, 851 (Ga. 2014) ("In this case, the evidence of Appellant's prior terroristic threats against his mother was relevant to show his motive, intent, and bent of mind when he shot his mother in the back with a

crossbow, and to disprove his defense that it was an accident."); State v. Haskins, 573 N.W.2d 39, 45 (Iowa Ct. App. 1997) ("Evidence that [Haskins] intentionally assaulted [the victim] during a previous argument tends to rebut his accidental shooting argument."). Third and possibly most significantly, Appellant *immediately* after the shooting began providing a false account of how Victim had been shot that was demonstrably untrue in multiple respects based on the expert testimony presented, which constituted compelling evidence of Appellant's consciousness of guilt and supported a conclusion he did *not* shoot Victim by accident as he had falsely claimed. See State v. Pittman, 137 S.C. 75, __, 134 S.E. 514, 526-527 (1926) (recognizing guilt can properly be inferred from an act of uttering false exculpatory statements); Town of Hartsville v. Munger, 93 S.C. 527, 529, 77 S.E. 219, 219 (1913) ("False and conflicting statements . . . have *always* been regarded as some evidence of guilty knowledge and intent." (emphasis added)); see also United States v. Sarli, 913 F.3d 491, 497 (5th Cir. 2019) ("As we have repeatedly stated, an implausible account provides persuasive circumstantial evidence of the defendant's consciousness of guilt. A rational jury may infer from an implausible account of exculpatory events that the defendant desires to obscure his criminal responsibility." (citations, brackets, internal quotations, and ellipses omitted)); State v. Robertson, 927 So. 2d 629, 636 (La. Ct. App. 2006) (recognizing the provision of various inconsistent statements about how a shooting occurred undercuts a claim the shooting was accidental); cf. People v. Helms, 272 N.E.2d 228, 231 (Ill. App. Ct. 1971) ("The fact that the only eye witness to the event, the Defendant, testifies concerning a misadventure does not require an acquittal. The self interest of the Defendant as a witness is obvious." (citation omitted)); State v. Nance, 533 N.W.2d 557, 563 (Iowa 1995) ("The evidence as to how the gun 'accidentally' discharged could be rejected by the jury as a false story. The use of a false story could also be treated as an implied admission."); People v.

Waugh, 592 N.Y.S.2d 789, 790 (N.Y. App. Div. 1993) ("The defendant's testimony that the gun discharged accidently and the conflicting expert testimony presented an issue of credibility for the jury[.]"); State v. Butler, 407 S.C. 376, 382, 755 S.E.2d 457, 460 (2014) (recognizing Butler's "various, inconsistent accounts of how the stabbing occurred created credibility issues and questions of fact to be resolved by the jury"); Cantu v. State, 395 S.W.3d 202, 209 (Tex. App. 2012) ("The inconsistencies in Cantu's statements could cause a rational juror to doubt the credibility of Cantu's assertion that the gun discharged accidentally while he tried to take the gun from Jackie."). In light of that, sufficient evidence was presented from which the jury could rationally and logically conclude Appellant was, in fact, the person who shot Victim in the head and, therefore, was guilty of her attempted murder.

Finally, looking to the possession of a weapon during the commission of a violent crime charge, the evidence and testimony presented established a gun was used to shoot Victim, and attempted murder was and is, in fact, a "violent" crime 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, just as the evidence was sufficient for Appellant to be convicted of attempted murder, 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 both attempted murder and possession of a weapon during the commission of a violent crime, and there is no legitimate basis 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)); cf. Harrison v. State, 855 S.E.2d 546, 549 (Ga. 2021) ("Here, the evidence authorized the jury to find a history of domestic violence by Harrison against Heather and a clear motive for Harrison, who was jealous and upset at the prospect of Heather's leaving him, to commit further violence against her. Harrison's credibility regarding the shooting was significantly undermined by his shifting accounts of the incident and his inability to successfully replicate the sequence of events that he claimed culminated in the gun's accidental discharge. Additionally, the testimony of the firearms examiner refuted Harrison's claim of an accidental discharge; likewise, the medical examiner's testimony undermined Harrison's claim that the gun had fired upward. Furthermore, the evidence of Harrison's prior acts against Horne substantiated the finding that the shooting of Heather was an intentional act motivated by anger and jealousy. Finally, the evidence that Harrison called Salcido mere minutes before the shooting to ask about traveling to Mexico was highly probative of not only intent but also premeditation. Viewed in its totality, this evidence

was sufficient to enable the jury, as the exclusive arbiter of evidentiary conflicts and witness credibility . . . to find that the shooting was intentional rather than accidental, and to conclude beyond a reasonable doubt that Harrison was guilty of all of the crimes of which he was convicted." (citations omitted)). 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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Attorney General

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ATTORNEYS FOR RESPONDENT

October 18, 2024

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County
Honorable Frank R. Addy, Jr., Circuit Court Judge
Appellate Case No. 2023-000501

THE STATE,

Respondent,

vs.

SCOTTY JOE FOWLER

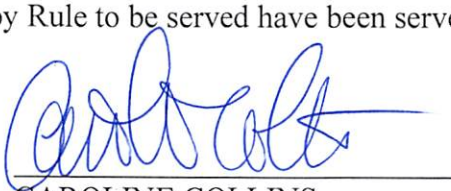
Appellant.

PROOF OF SERVICE

I, Caroline Collins, certify I have served the within Final Brief of Respondent on Appellant by sending an electronic copy via email to the address listed in AIS for the following individual:

Tristan Michael Shaffer, Esquire
Tristan M. Shaffer Attorney at Law
Post Office Box 1135
Irmo, South Carolina 29063

I further certify all parties required by Rule to be served have been served.
This 18th day of October, 2024.



CAROLINE COLLINS
Administrative Support Manager
Office of the Attorney General

From:	Caroline Collins
To:	Tristan Shaffer
Cc:	Mark Farthing
Bcc:	Victim Services
Subject:	The State v. Scotty Joe Fowler (2023-000501)
Date:	Friday, October 18, 2024 3:41:00 PM
Attachments:	Fowler.FBOR.pdf image001.png

Good Afternoon Mr. Shaffer,

Attached please find the Final Brief of Respondent in The State v. Scotty Joe Fowler (2023-000501). This will be submitted to the South Carolina Court of Appeals via the AIS OneDrive System.

If you will, please confirm receipt.

Thank you,

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