STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Hampton County

Honorable Robert J. Bonds, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LORENZO BOLES,

APPELLANT

APPELLATE CASE NO. 2023-001824

FINAL BRIEF OF APPELLANT

LARA M. CAUDY
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

STATEMENT OF ISSUE ON APPEAL

Did the trial court err by denying Appellant's motion for a directed verdict for accessory before the fact of murder and accessory before the fact of armed robbery when the state failed to present any direct or substantial circumstantial evidence to support the offenses, rather the evidence merely raised a suspicion Appellant was somehow involved because a car Appellant was known to drive was allegedly seen traveling toward and away from the scene and the blood of one of the decedents was later found in the car?

STATEMENT OF THE CASE

A Hampton County grand jury indicted Appellant for three counts of accessory before the fact of murder and one count of accessory before the fact of armed robbery. R. 877 – 884. His case was called to trial on November 6, 2023, before the Honorable Robert J. Bonds, and a jury. R. 1. Appellant was tried jointly with his codefendant, Tyrase Collins.[1] R. 1. Assistant Solicitor Reed Evans represented the state. Christopher Gibbes represented Appellant. Charlie J. Johnson, Jr. represented Collins. R. 2.

On November 10, 2023, the jury found Appellant guilty as indicted. R. 848, l. 11 – 851, l. 5. He was sentenced to forty-five years for each count of accessory before the fact of murder and thirty years for accessory before the fact of armed robbery. All sentences were ordered to be served concurrently. R. 871, l. 5 – 872, l. 17.

This appeal follows.

[1] Tyrase Collins was indicted, tried, and convicted of three counts of murder, armed robbery, and possession of a weapon during the commission of a violent crime. R. 847, l. 14 – 848, l. 9.

STATEMENT OF FACTS

During the early morning hours of March 25, 2018, Frankie Johnson, Ghazi Duckett, and Lamekia Warren were shot and killed in Johnson's trailer. The two bedroom trailer was located on a dirt road in a secluded area just outside the town limits of Varnville, South Carolina. Duckett and Warren, who were dating, lived with Johnson and his girlfriend, Khadajah Williams. Duckett and Warren shared the front bedroom and Johnson and Williams shared the back bedroom. R. 199, l. 15 – 201, l. 24.

Williams was in the trailer during the shooting. She was lying in bed alone when she heard gunshots. She was not alarmed at first because gunfire was not unusual in the area. After Williams heard at least one gunshot, she heard Duckett say, "What's up, bro?" Williams started walking down the hallway toward the living room to see what was going on. As she was walking, she heard a "gagging" noise. This is when Williams became alarmed. She walked back into the bedroom and hid in a closet. She eventually called 911 and told the dispatcher that her boyfriend had been shot. R. 201, l. 25 – 207, l. 18; State's Exhibit No. 200 (911 Call). Williams later told the police that she recognized the voice of Fuquan Harris in the residence. She also heard a woman's voice that she did not recognize. R. 219, l. 24 – 221, l. 20; R. 322, ll. 7-16.

Michael Smith, the Assistant Chief of the Varnville Police Department, heard the call go out to the Hampton County Sheriff's Office shortly after 5:30 a.m. Smith responded to Johnson's trailer to offer assistance. On his way there, Smith passed a red Dodge Charger and a black vehicle. However, he did not see anyone inside the vehicles. R. 242, l. 1 – 244, l. 11. Smith arrived at the residence just after Deputy Stacy Loadholt. Deputy Loadholt encountered

Khadajah Williams in the yard. Williams told Loadholt that three people were shot inside the trailer. R. 222, l. 23 – 227, l. 23; R. 246, l. 22 – 249, l. 8.

When Smith and Loadholt entered the trailer, they found Johnson slumped over in a chair in the living room. He was covered in blood and appeared to be deceased. In the front bedroom, they found Duckett and Warren both lying on the floor. Warren also appeared to be deceased. However, Duckett made a "gurgling noise." EMS responded and transported Duckett to the hospital where he was later pronounced dead. R. 232, l. 7 – 234, l. 5; R. 249, l. 10 – 251, l. 11; R. 276, l. 4 – 279, l. 14.

The pathologist who conducted the autopsies determined that Johnson and Duckett both suffered a single gunshot wound to the head. Warren, however, had thirty-five gunshot wounds to her "neck, torso, and extremities." R. 666, l. 12 – 667, l. 6; R. 652, ll. 19-22.

Melissa Fields, Warren's mother, claimed that she saw a red Dodge Charger followed by a white Ford Crown Victoria turn left toward Frankie Johnson's trailer sometime between 5:15 and 5:45 that morning, while she was driving home from a night club. Fields did not see anyone inside the vehicles. However, she recognized the red Dodge Charger as the vehicle that Appellant drove. According to Fields, Appellant's brother, who lived in Texas, owned the Charger, but Appellant usually drove it. R. 258, l. 21 – 273, l. 8.

Law enforcement started its investigation with Fuquan Harris. Harris was originally charged in the case based on Khadajah Williams's statement that she heard Harris's voice in the trailer during the shooting. However, the charges were ultimately dismissed when law enforcement was unable to develop any further evidence against him. R. 325, l. 3 – 327, l. 24.

Law enforcement then began to focus on Appellant because he was known to drive a red Dodge Charger. Appellant had outstanding arrest warrants for unrelated charges. Investigators

began searching for Appellant with the intent to arrest him on the unrelated charges and bring him in for questioning related to this case. R. 401, l. 2 – 402, l. 19.

Investigators obtained a search warrant for 53 Crews Street in Varnville associated with the Collins family. Appellant is related to the Collins family. Officers responded to the residence around 11:00 a.m. on March 26, 2018, about thirty hours after the murders, to execute the warrant. R. 327, l. 25 – 330, l. 24. When law enforcement arrived, there were "several people" at the trailer. However, "some people were able to run away, got out through the back door and ran away." Investigators suspected Appellant was one of these people. Although, they offered no proof to support their suspicions. R. 402, l. 25 – 404, l. 22.

It was determined that Appellant's then seventeen year old codefendant, Tyrase Collins, lived at the trailer at 53 Crews Street with his older brother Hassan Collins.[2] R. 377, l. 8 – 379, l. 11. Hassan was in the front yard when law enforcement arrived to execute the search warrant. However, Tyrase was at school. Investigators found Albert Crittington, Jr. hiding under the bed in Tyrase's bedroom. R. 362, l. 4 – 363, l. 17.

During the search of the trailer, officers found three firearms in Tyrase's bedroom. Two Glock handguns, a .40 caliber and a .45 caliber, were found in a bag. A third firearm, a 7.62 caliber, "commonly known on the streets as a Draco," was found in a dresser drawer. R. 334, l. 17 – 336, l. 24. Outside in the yard, investigators found and collected five fired cartridge casings. R. 346, ll. 4-24.

A red Dodge Charger was also found parked outside 53 Crews Street. The vehicle was towed to the Hampton County Sheriff's Office impound lot where it was eventually searched pursuant to a warrant. R. 337, l. 15 – 339, l. 9. In the vehicle, investigators found a receipt from

[2] Hassan Collins died in a car accident roughly two years before Appellant's trial. R. 381, ll. 13-25.

the Dollar General dated March 26, 2018, at 10:06 a.m., roughly an hour before law enforcement arrived at 53 Crews Street to execute the search warrant. Law enforcement obtained security footage from the Dollar General around that timeframe. The footage showed a red Dodge Charger pull into the parking lot and Appellant get out of the vehicle. R. 352, l. 20 – 354, l. 10.

Rashina Collins, the mother of Frankie Johnson's child, testified that she bought Johnson a "Draco" firearm on February 13, 2018, because Johnson asked her to purchase it for him. After she bought the gun, she gave it to Johnson. She saw Johnson with the gun within a week of his death. Rashina identified the "Draco" firearm found in the dresser drawer in Tyrase Collins's bedroom as the gun she purchased and gave to Frankie Johnson. R. 387, l. 6 – 390, l. 22. In addition to being the mother of Johnson's child, Rashina was also cousins with Appellant and Tyrase Collins. Rashina testified that besides Appellant, Craig Collins, Appellant's brother, and Juanita Boles, Appellant's mother, also drove the red Dodge Charger. However, she admitted that other individuals may have driven the vehicle as well. R. 387, l. 21 – 388, l. 11; R. 393, l. 11 – 394, l. 2; R. 396, l. 20 – 397, l. 7.

Samuel Shepard, an acquaintance of Ghazi Duckett, purchased the .45 caliber Glock Model 38 handgun found in the bag in Tyrase Collins's bedroom on December 12, 2016. Shepard testified that he loaned this firearm to Ghazi Duckett sometime in late 2017 or early 2018. Shepard maintained that he saw the gun in Duckett's possession sometime between when he loaned the gun to Duckett and Duckett's death. Although, he could not recall when. Shepard expected to get the firearm back from Duckett, but Duckett did not return the firearm before his death. R. 414, l. 19 – 419, l. 16; R. 876.

The third firearm found in Tyrase Collins's bedroom, the .40 caliber Glock Model 23, was purchased by Camron Davis in February 2017. R. 875. Davis sold this gun to his cousin,

Aaron Stokes. The two created their own receipt, but did not "tell the government" about the sale. Stokes testified that he last saw the Glock Model 23 in December 2017. The firearm was stolen around Christmas when Stokes was out of town visiting his parents. Stokes reported the theft to law enforcement at the time. R. 543, l. 2 – 546, l. 25.

The investigators who processed the scene at Johnson's trailer found and collected twenty .40 caliber Smith & Wesson cartridge casings and five projectiles. This ballistics evidence was later sent to the South Carolina Law Enforcement Division (SLED) for analysis. Ten of the .40 caliber Smith & Wesson cartridge casings found in Johnson's trailer were fired by the .40 caliber Glock Model 23 found in a bag in Tyrase Collins's bedroom (the gun Stokes reported stolen in December 2017). The other ten fired .40 caliber Smith & Wesson cartridge casings found in Johnson's trailer were fired by a single unidentified firearm, but not the .40 caliber Glock Model 23 found in Tyrase Collins's bedroom. The five .40 caliber cartridge casings found in the yard of 53 Crews Street were also fired by this second unidentified firearm. R. 476, l. 4 – 178, l. 22; R. 490, l. 3 – 491, l. 5.

DNA analysis was performed on a swab collected from the trigger of the .40 caliber Glock Model 23 handgun found in Tyrase Collins's bedroom, which was shown to have fired ten of the cartridge casings found in Frankie Johnson's trailer. A mixture of DNA from at least four individuals was found on the swab from this firearm. The DNA profile of the major contributor to the mixture "matches the DNA profile of Tyrase Collins." R. 568, l. 8 – 569, l. 16; R. 593, l. 23 – 594, l. 11. The DNA profile developed from swabs collected from the "Draco" rifle found in Tyrase Collins's bedroom, which Rashina Collins testified that she had purchased and given to Frankie Johnson, "matches the DNA profile of Frank Johnson." R. 563, ll. 7-13. A mixture of DNA from at least three individuals was found on the magazine from the Draco firearm. "A

partial DNA profile of the major contributor matches the DNA profile of Frank Johnson." R. 564, ll. 12-22.

During the search of the red Dodge Charger, investigators collected swabs of suspected blood from the interior rear passenger door. R. 428, l. 5 – 434, l. 9; R. 437, ll. 3-18. A swab collected from the interior rear passenger door armrest was "presumptively positive for blood." The DNA profile developed from this swab was a mixture of multiple individuals. "The DNA profile of the major contributor matches the DNA profile of Frank Johnson." R. 579, l. 18 – 581, l. 16. A swab from the interior rear passenger door window button was also presumptive positive for blood. The DNA profile developed from this swab was a mixture of at least three individuals. "The partial DNA profile of the major contributor matches the DNA profile of Frank Johnson." R. 581, l. 17 – 582, l. 2. A swab from below the window of the interior rear passenger door was also presumptive positive for blood. The DNA profile developed from this swab was a mixture of at least three individuals. The partial DNA profile of the major contributor matches the DNA profile of Frank Johnson. R. 583, ll. 11-19. A swab from the interior rear passenger door armrest handle was also presumptive positive for blood. The DNA profile developed from this swab was a mixture of at least two individuals. The DNA profile of the "major contributor matches the DNA profile of Frank Johnson." R. 583, l. 22 – 584, l. 6. Lastly, the DNA profile developed from a second swab from the interior rear passenger door armrest handle was "interpreted as a mixture originating from two individuals. The "DNA profile is approximately 440 sexdecillion times more likely if Frank Johnson and Tyrase Collins contributed to the mixture, than if two unidentified, unrelated individuals contributed." R. 592, l. 7 – 593, l. 22.

Through their investigation, investigators determined Appellant was in Savannah, Georgia. He was arrested at a Motel 6 in Savannah. R. 405, l. 10 – 406, l. 20. The date of his arrest does not appear in the record. Hassan Collins, Tyrase Collins's brother, was with Appellant when he was arrested. R. 409, ll. 2-23.

At the conclusion of the state's case, Appellant moved for a directed verdict. Defense counsel argued the state failed to present any evidence to support the elements of accessory before the fact. He asserted, "There is no evidence whatsoever that my client advised, urged, or assisted in any way with regard to these murders." He further argued that there was some evidence that Appellant was present at Frankie Johnson's trailer when the murders and armed robbery occurred because Appellant's vehicle was allegedly seen going toward and away from the location of Johnson's trailer. R. 677, l. 4 – 678, l. 14.

The trial court emphasized that the elements of accessory before the fact include "that the defendant advised, agreed, urged, counseled, hired, or in some way aided or abetted another person to commit a crime and that the defendant was not present when the crime was committed." R. 678, l. 19 – 679, l. 6.

The assistant solicitor acknowledged "that absence from the scene is an element in South Carolina law for accessory before the fact." He argued there was no evidence presented that Appellant was present at the scene, only Appellant's vehicle. He asserted, "There was no witness that testified that they could identify the driver of the vehicle or any passengers in the vehicle, only the vehicle itself." The solicitor maintained that there was "no question" that Appellant's "vehicle was involved in this offense." He concluded that because Appellant "operates, controls" the vehicle and the "vehicle served as assistance in this offense," the state presented sufficient evidence of accessory before the fact. R. 679, l. 8 – 682, l. 20.

The trial court inquired of the solicitor, "Are you arguing that . . . as a result of the vehicle's involvement, Mr. Boles [Appellant] having substantial connections with the vehicle, that that gives rise to some evidence of his aiding in this matter?" The solicitor answered, "That's my argument." He also contended that there was evidence that Appellant fled 53 Crews Street on March 26, 2018, which constitutes consciousness of guilt. R. 683, l. 2 – 684, l. 8.

In response, defense counsel asserted, "There is no evidence whatsoever that my client advised, suggested, encouraged, or even directed a principal to commit any murders or robberies," which is an "essential" element of accessory before the fact. Counsel further argued that there was no evidence Appellant "gave anyone any guns" or the keys to the vehicle. He maintained that "all we are dealing with is pure speculation" and that, pursuant to State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004), a directed verdict was proper. R. 684, l. 21 – 685, l. 25.

The trial court ultimately denied the motion for a directed verdict. The court found there was evidence Appellant "in some way aided." The court reasoned, "When I look at the evidence in the light most favorable to the State, the evidence could be viewed to show that he allowed the use of a vehicle to which he had substantial control over. . . . I believe that that could be considered giving support to or to give assistance to." The Court further found there was no "evidence that he [Appellant] was present at the scene." R. 686, l. 1 – 687, l. 14.

STANDARD OF REVIEW

"The defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011) (citing State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001)). "However, if there is any direct or *substantial* circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." Id. (citing State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000)) (emphasis in original). "On appeal from the denial of a directed verdict, this Court must view the evidence in the light most favorable to the State." Id. (citing State v. Lollis, 343 S.C. 580, 583, 541 S.E.2d 254, 256 (2001)).

"A [trial court] should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty." Id. (citing State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 451-452 (1984)). "Suspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." State v. Buckmon, 347 S.C. 316, 322, 555 S.E.2d 402, 404-405 (2001) (citing Lollis, 343 S.C. at 584, 541 S.E.2d at 256). "When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." State v. Shands, 424 S.C. 106, 135, 817 S.E.2d 524, 539 (Ct. App. 2018) (citing State v. Hernandez, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009)).

ARGUMENT

The trial court erred by denying Appellant's motion for a directed verdict for accessory before the fact of murder and accessory before the fact of armed robbery when the state failed to present any direct or substantial circumstantial evidence to support the offenses, rather the evidence merely raised a suspicion Appellant was somehow involved because a car Appellant was known to drive was allegedly seen traveling toward and away from the scene and the blood of one of the decedents was later found in the car.

The trial court erred by denying Appellant's motion for a directed verdict for accessory before the fact of murder and accessory before the fact of armed robbery when the state failed to present any direct or substantial circumstantial evidence to support the elements of the offenses. More specifically, there was no evidence Appellant "either advised and agreed, urged, or in some way aided some other person to commit" murder and armed robbery, and was not present when the offenses were committed. See State v. Prince, 316 S.C. 57, 64, 447 S.E.2d 177, 181 (1993) (citing State v. Farne, 190 S.C. 75, 1 S.E.2d 912 (1939)). The evidence merely raised a suspicion Appellant was involved because a car Appellant was known to drive was seen traveling toward and away from the scene and the decedent's blood was found in the car.

A defendant is entitled to a directed verdict when the prosecution fails to provide evidence of the offense charged. State v. Brown, 103 S.C. 437, 88 S.E. 21 (1916); State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006); State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused," the trial court may deny the motion for directed verdict. State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001); State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000); State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000). When the

prosecution relies exclusively on circumstantial evidence, the trial court must direct a verdict in the defendant's favor unless there is substantial circumstantial evidence which reasonably tends to prove the guilt of the defendant or from which his guilt may be fairly and logically deduced. State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011); State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000). Likewise, a directed verdict is proper when the evidence produced "merely raises a suspicion the accused is guilty." Lollis, 343 S.C. at 584, 541 S.E.2d at 256; State v. Arnold, 361 S.C. 386, 389-390, 605 S.E.2d 529, 531 (2004); State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 451-452 (1984); State v. Muhammed, 338 S.C. 22, 524 S.E.2d 637 (Ct. App. 1999). Our courts define suspicion as "a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." Lollis, 343 S.C. at 584, 541 S.E.2d at 256; State v. Hyder, 242 S.C. 372, 131 S.E.2d 96 (1963).

In State v. Mitchell, 341 S.C. at 409, 535 S.E.2d at 127, our Supreme Court held the trial court erred by failing to direct a verdict where the evidence presented against Mitchell was his fingerprint at the scene of the burglary. Likewise, the Court in Lollis directed a verdict of acquittal where the state presented no direct evidence that Lollis was involved in setting fire to his home. The circumstantial evidence against Lollis was that his wife admitted to the arson, he had placed valuables in storage prior to the fire, he possessed a key to the storage unit, and he allegedly had financial troubles. The Court found this evidence insufficient. 343 S.C. at 584-85, 541 S.E.2d at 256-57.

In State v. Odems, 395 S.C 582, 720 S.E.2d 48 (2012), our Supreme Court held the defendant was entitled to a directed verdict based upon a lack of substantial circumstantial evidence that Odems was involved in the burglary. Although Odems was in a car with other individuals who admittedly burglarized a home, the state failed to provide substantial circumstantial evidence that

Odems was present during the home invasion. The witness who saw individuals at the home claimed she saw two, not three as were found in the car. Fingerprints collected from the stolen goods did not match Odems, but matched the other individuals in the car. One of the individuals who admitted his involvement claimed Odems was picked up after the burglary at a gas station. Id. at 588, 720 S.E.2d at 51.

In State v. Bostick, 392 S.C. 134, 141, 708 S.E.2d 774, 778 (2011), the Supreme Court held the prosecution failed to present substantial circumstantial evidence of Bostick's guilt. Rather, the evidence was capable of producing only a suspicion of Bostick's guilt. Id. Although the police found items belonging to the victim in a burn pile behind the home of Bostick's mother, the Court held no evidence linked Bostick to the evidence in the burn pile and the prosecution presented no testimony that Bostick had control over the burn pile. Id. at 137-141, 708 S.E.2d at 775-778. The other evidence presented against Bostick was that he had a chemical pattern that matched gasoline on his shoes and gasoline was used to start the fire at the victim's home, and DNA from blood on Bostick's jeans excluded ninety-nine percent of the population, but the expert could not testify the DNA matched the victim. Id. at 142, 708 S.E.2d at 778.

In State v. Arnold, our Supreme Court held a directed verdict of acquittal for murder should have been granted. Arnold was convicted of murdering Dr. Jennings Cox of Savannah, Georgia. Cox was last seen alive on June 18, 1997, when he borrowed a colleague's car, a BMW, to go to a dentist appointment. Three days later, his body was found off Interstate 95 in Colleton County. He was shot twice. Information on a floppy disk found on Cox's computer led the police to Bobby Ray Ware. Ware admitted to having a sexual relationship with Cox. Because Ware knew Cox "liked to have sex with truckers," Ware introduced Cox to Arnold, who was staying with Ware, on the weekend of June 14, 1997. Cox and Arnold had sex that weekend. Ware left for Chicago on June

17, 1997. When Ware left, Arnold was still staying at Ware's residence. On June 19, 1997, Ware received a message from Arnold to call him at a phone number in Tennessee. Ware later contacted Arnold at a phone number identified as belonging to Arnold's father who lived in Tennessee. On June 20, 1997, the borrowed BMW was found in a parking lot in Johnson City, Tennessee. Arnold's fingerprint was found on the tab from a coffee cup lid found in the center compartment. 361 S.C. at 388-89, 605 S.E.2d at 530. The Court held this evidence, in the light most favorable to the state, merely raised a suspicion of guilt. It was not sufficient evidence that Arnold killed Cox. Id. at 390, 605 S.E.2d at 531.

Appellant was indicted for accessory before the fact of murder and accessory before the fact of armed robbery. "A conviction for the crime of accessory before the fact requires proof that the accused (1) either advised and agreed, urged, or in some way aided some other person to commit the offense; (2) was not present when the offense was committed; and (3) that some principal committed the offense." State v. Prince, 316 S.C. 57, 64, 447 S.E.2d 177, 181 (1993) (citing State v. Farne, 190 S.C. 75, 1 S.E.2d 912 (1939)); See S.C. Code Ann. § 16-1-40 ("A person who aids in the commission of a felony or is an accessory before the fact in the commission of a felony by counseling, hiring, or otherwise procuring the felony to be committed is guilty of a felony and, upon conviction, must be punished in the manner prescribed for the punishment of the principal felon."). "The State need only prove that *some* principal committed the crime at the behest of the accessory." State v. Smith, 316 S.C. 53, 55, 447 S.E.2d 175, 176 (1993) (citing State v. Cox, 287 S.C. 260, 335 S.E.2d 809 (Ct. App. 1985) and State v. Massey, 267 S.C. 432, 229 S.E.2d 332 (1976)).

In State v. Smith, our Supreme Court held the trial court properly granted Smith a new trial because there was insufficient evidence to sustain the jury's conviction of Smith for

accessory before the fact of murder. 316 S.C. at 56, 447 S.E.2d at 176. Charles McCray admitted he was paid to murder Billy Graham. McCray shot Graham, stole his pistols, and set his house on fire. There was evidence McCray was dropped off near Graham's home on the night of the murder. Roger Prince and Smith were charged with accessory before the fact of murder and conspiracy. Prince, Smith, and McCray were tried jointly. The state sought to establish that Smith and Prince conspired to have Graham murdered to deter a pending civil lawsuit. Fred Andrews testified that both Smith and Prince separately contacted him about hiring someone to commit a murder. Smith approached Andrews on two occasions five months before the killing, asking what it would take to have "someone taken care of" for him. Smith never identified his intended victim. Prince also approached Andrews on two occasions the month Graham was killed. Prince told Andrews that he and Smith needed to have Graham killed and were prepared to pay $20,000. Shortly after this conversation, Prince advised Andrews that he had hired a local person to commit the murder. Months later while the police were investigating Graham's death, Prince called Andrews and warned him to keep his "mouth shut." Prince, 316 S.C. at 60-61, 447 S.E.2d at 179-80.

The Supreme Court held there was insufficient evidence to sustain the jury's conviction of Smith for accessory before the fact of murder. Smith, 316 S.C. at 56, 447 S.E.2d at 176. The Court emphasized that the state's evidence failed to show that Smith procured the murder of Graham. Although there was some evidence that Smith discussed a possible murder with Andrews, there was no connection between the discussion and Graham's subsequent murder. Additionally, "although there was sufficient evidence of the corpus delicti of the murder, there was no evidence that a principal committed this murder *on behalf of Smith*." Id. (emphasis in original).

On the other hand, in State v. Prince, the Court held the trial court erred by granting Prince a new trial for accessory before the fact of murder and reinstated his conviction. 316 S.C. at 63, 447 S.E.2d at 181. The Court found Prince's statements to Andrews that he was seeking someone to murder Graham, and that, ultimately, he procured a murderer, as well as his threats prior to and after the murder constitute sufficient evidence that some principal murdered Graham on behalf of Prince. The Court further found there was sufficient circumstantial evidence of the other elements of the offense to sustain the jury's conviction of Prince for accessory before the fact of murder. Prince, 316 S.C. at 64, 447 S.E.2d at 181.

In State v. Massey, 267 S.C. 432, 446, 229 S.E.2d 332, 339 (1976), our Supreme Court held the trial court did not err in denying Massey's motion for a directed verdict on accessory before and after the fact of murder. Massey admitted he dropped off one of the assailants a few blocks from the decedent's residence. Moreover, "the circumstantial evidence presented by the state was sufficient to give rise to the conclusion that [Massey] was present in the [decedent's] house at the time of the incident, or that he was waiting for the perpetrators in a car immediately outside the house and that he was acting in concert with them." Id. at 443, 229 S.E.2d at 338.

In State v. Gentry, our Supreme Court held the trial court properly denied Gentry's motion for a directed verdict on the charges of accessory before the fact of armed robbery and accessory before the fact of assault and battery with intent to kill because there was conflicting evidence presented regarding whether Gentry was present during the taking of the cocaine from the victim's possession and the shooting. 363 S.C. 93, 104, 610 S.E.2d 494, 501 (2005). Regarding accessory before the fact of armed robbery, the Court emphasized that there was evidence Gentry was present when his codefendant pulled a gun on the victim and informed the victim they were going to take the cocaine as well as other evidence that Gentry left the house

with the cocaine. Gentry, on the other hand, told the police that he was outside in a car when a codefendant entered the car with the cocaine. Regarding the offense of accessory before the fact of assault and battery, a codefendant stated Gentry was present during the shooting, but Gentry and another codefendant maintained Gentry was not present during the shooting. Id. at 104, 610 S.E.2d at 500-01.

In this case, the state failed to present any evidence Appellant "either advised *and* agreed, urged, or in some way aided some other person to commit" murder and armed robbery. See Smith, 316 S.C. at 55, 447 S.E.2d at 176 (emphasis added). Moreover, there was no evidence Appellant was not present when the offenses were committed. In the light most favorable to the state, the only circumstantial evidence against Appellant was that the car he was known to drive was seen traveling toward and away from Frankie Johnson's trailer where the murders and armed robbery occurred and that Frankie Johnson's blood was found in the back seat of this vehicle. *At most*, the evidence merely raised a suspicion Appellant was somehow involved because the car he was known to drive was involved. There was no evidence Appellant advised some other person to murder Johnson, Duckett, and Warren, or commit armed robbery. There was no evidence Appellant agreed, urged, or in some way aided some other person to murder Johnson, Duckett, and Warren, or commit armed robbery. There was no evidence Appellant gave the perpetrator permission to use his vehicle, or gave the perpetrator the keys to the vehicle, or personally drove the perpetrator to Johnson's trailer.

The assistant solicitor argued at trial that there was evidence of flight, which constituted consciousness of guilt. Appellant vehemently disagrees. While law enforcement suspected Appellant was present at 53 Crews Street when law enforcement arrived to execute a search warrant roughly thirty hours after the murders and armed robbery and that Appellant fled, the state presented

no evidence to support this suspicion. Moreover, even if Appellant was present at 53 Crews Street and fled, there was no evidence that Appellant had knowledge he was being investigated related to this case and fled as a result. Simply put, there was no evidence of a nexus between the alleged flight and the offenses charged in this case. If Appellant was present and fled, it is possible he fled because he knew he had *unrelated* outstanding warrants for his arrest (although, again, the state presented no evidence Appellant knew he was being sought by law enforcement). As far as Appellant ultimately being found and arrested in Savannah, Georgia, there was no evidence as to when this arrest occurred or that Appellant had knowledge he was being sought by authorities related to this case. See State v. Pagan, 369 S.C. 201, 631 S.E.2d 262 (2006) ("The critical factor to the admissibility of evidence of flight is whether the totality of the evidence creates an inference that *the defendant had knowledge that he was being sought by the authorities*. It is sufficient that circumstances justify an inference that the defendant's actions were motivated as a result of his belief that police officers were aware of his wrongdoing and were seeking him for that purpose. Flight evidence is relevant when there is *a nexus between the flight and the offense charged*.") (emphasis added) (internal citations omitted).

There simply was not substantial circumstantial evidence Appellant (1) "either advised and agreed, urged, or in some way aided some other person to commit" murder and armed robbery; and (2) "was not present when the offenses were committed." Consequently, the trial court erred by denying Appellant's motion for a directed verdict. Respectfully, this Court should direct a verdict of acquittal for all counts of accessory before the fact of murder and accessory before the fact of armed robbery.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court direct a verdict of acquittal for all counts of accessory before the fact of murder and accessory before the fact of armed robbery.

Respectfully Submitted,

Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of September, 2025.

RECEIVED
Sep 10 2025
SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant 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."

This 10th day of September, 2025.

Lara M. Caudy
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

RECEIVED
Sep 10 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Hampton County

Honorable Robert J. Bonds, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LORENZO BOLES,

APPELLANT

APPELLATE CASE NO. 2023-001824

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Appellant in the above referenced case has been served upon Andrew D. Powell, Esquire, at his primary email address listed in the Attorney Information System (AIS), this 10th day of September, 2025.

Lara M. Caudy

Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR APPELLANT