THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Hon. Daniel Coble, Circuit Court Judge

Appellate Case No. 2024-000890
Lower Case No. 2022GS4001884

State of South Carolina . . . . . Respondent,

vs

Troy C. Stevenson, Jr., ... Appellant

FINAL REPLY BRIEF OF APPELLANT

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Question I

Did the trial court err in failing to suppress the testimony as to the alleged defective taillight of the black Honda Accord belonging to Ashley Carter when the disclosure was made at 1:17 P.M. through an email the day the trial started?

On the day before the trial, the trial court found that the discovery violations at the pre-trial hearings were not deemed to be intentional or wilful acts but arose more from a bad relationship between counsel. While those issues may have resulted from something less than intentional or grossly negligent act of the assistant solicitor, the same cannot be said for the issue that arose on the opening day of trial. At the hearing before trial the solicitor listened to opposing counsel accuse him of disregarding his discovery violation. Not disclosing the result of the test of the automobile at that time had to be a wilful act. The State has not argued that the assistant solicitor did not know of the broken light until after that hearing. The State did not give a reason, neither at trial nor in the brief, for the solicitor not disclosing the rear light of the automobile that was out at the hearing before the trial started. As a result, the decision not to disclose the information at the pre-trial hearing, but to disclose it after the trial started, had to be intentional or completely reckless at best.

The State, in defense of the assistant solicitor, has concluded, "Thus, no Rule 5 violation occurred." BoR at 13 In support of this conclusion, the State has argued, "Simply stated, the evidence here is not material for purposes of Rule 5." BoR at 13. They state that simply because the evidence was provided prior to the presentation of the evidence, no Rule 5 violation has occurred. Rule 5 is violated when the State fails to disclose the result of the test conducted by

the State on the automobile. Disclosure of the test results is required by Rule 5. To say that the State may comply with Rule 5 by simply providing the information shortly before the evidence is presented, "[I]s but to 'keep the promise to the ear and break it to the hope.'" *State v. Prescott*, 125 S.C. 22, ___, 117 S.E. 637, 638 (1923). The purpose of Rule 5 is to prevent trial by ambush. *State v. Barroso*, 320 S.C. 1, 23, 462 S.E.2d 862, 876 (Ct. App. 1995), rev'd, on other grounds 328 S.C. 268, 493 S.E.2d 854 (1997)("We also agree the prosecutor engaged in "trial by ambush" in bringing the information out in this manner, particularly where the record demonstrates the prosecutor knew what the witness would say several days in advance of the testimony.")

The trial judge in this case had the option of excluding the evidence, giving the defense attorney a few days to examine the new evidence, or declaring a mistrial to give the defense opportunity to examine the evidence. "Under Rule 5(d)(2), SCRCrimP, where a party fails to comply with Rule 5, the court may order the noncomplying party to permit inspection, grant a continuance, prohibit introduction of the nondisclosed evidence, or enter such order as it deems just under the circumstances." *State v. Kerr*, 330 S.C. 132, 150, 498 S.E.2d 212, 221 (Ct. App. 1998). The trial court elected to use none of these alternatives in denying the defense motion. The trial judge failed to heed his own words when he said as to discovery violations, "[I]f there's an intention [sic] act on the other end, if there is a reckless disregard, gross negligence by the State in keeping evidence away from the defense, that's what I am looking for, something drastic of that nature." ROA at 163, ll 22-25. As the State knew of this new information at least by the previous day when discovery violations were discussed, the action of the State had to have been intentional, reckless disregard or grossly negligent.

When a discovery violation causes a defendant to re-think their entire theory of defense, prejudice has to be presumed. The Eleventh Circuit Court of Appeals held prejudice is presumed when late disclosed evidence would have impacted the theory of defense. In *United States v. Noe*, 821 F.2d 604 (11th Cir. 1987) the government, in a drug conspiracy case, failed to disclose a recorded telephone conversation with the defendant that undermined his alibi defense. In reversing the case, the court said, "And, contrary to the government's contentions, the degree to which those rights suffer as a result of a discovery violation is determined not simply by weighing all the evidence introduced, but rather by considering how the violation affected the defendant's ability to present a defense." *Id.* at 607. The identity of the automobile was a critical issue in this case. To withhold key evidence as to the identity of the automobile until the start of the trial.

As noted in the opening brief, when money was involved, this court reversed *Richardson on Behalf of 15th Cir. Drug Enf't Unit v. Twenty-One Thousand & no/100 Dollars ($21,000.00) U.S. Currency & Various Jewelry*, 430 S.C. 594, 846 S.E.2d 14 (Ct. App. 2020) for a discovery violation when the government was seeking to forfeit the money and jewelry. The same principle should apply when the government is seeking to incarcerate a person. The discovery violation was prejudicial to Mr. Stevenson in preparing his defense. The conviction should be reversed.

Question II

Did the trial judge err in failing to grant a directed verdict motion when the state failed to establish substantial circumstantial evidence to prove that Troy Stevenson was the person who fired the weapon or that he aided and abetted in firing a weapon?

The South Carolina Supreme Court has said, "When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight. A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. When reviewing a denial of a directed verdict, this Court views the evidence and all reasonable inferences in the light most favorable to the state. If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury." *State v. Weston*, 367 S.C. 279, 292–93, 625 S.E.2d 641, 648 (2006). This court and the lower court use the exact same standard of review. Thus, the standard of review of the lower court is not abuse of discretion. This court reviews the same evidence as the lower court using the exact same standard. Thus, the standard of review is de novo. As the Michigan court has stated, "When reviewing a trial court's decision on a motion for a directed verdict, this Court reviews the record de novo to determine whether the evidence presented by the prosecutor, viewed in the light most favorable to the prosecutor, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt." *People v. Aldrich*, 246 Mich. App. 101, 122, 631 N.W.2d 67, 79 (2001). When this court and the lower court review the same evidence with the same standard, the standard of review is not abuse of discretion.

The State has argued that the failure of the state to offer proof of an agreement is not preserved for review. When a motion for a directed verdict is made, trial counsel has the right to assume the trial judge knows the law. When a directed verdict is made, trial counsel, therefore, has the right to assume the trial judge knows that proof of an agreement is necessary to convict. As the Maryland court has said, "We presume that the trial judge knows the law . . . ." *Reuter v.*

Reuter, 102 Md. App. 212, 244, 649 A.2d 24, 39 (1994); *See, also,* 5 C.J.S. *Appeal and Error* § 914 (2025)("An appellate court presumes that the trial judge knows the law.")

In discussing the standard of review, the State does not address the issue of what a trial judge or an appellate judge should do if the inferences from the facts support guilt as well as innocence. Under such facts has the State provided substantial circumstantial evidence? In this case, there is no substantial circumstantial evidence to support the theory of the hand of one is the hand of all. While this was not the only theory presented by the State, based upon the jury verdict it is the most likely basis the jury found for convicting Mr. Stevenson. He was acquitted of possession of a firearm while engaged in a violent crime. The State in its brief does not attempt to define the phrase "substantial circumstantial evidence." Nor have our courts. At the very least, the phrase has to mean the version of the facts supporting guilt is substantially more likely than the version of the facts supporting innocence. This court should reverse the conviction of Mr. Stevenson.

Question III

Did the trial court err in charging the jury as to the law of the hand of one is the hand of all when the state introduced no evidence of any planning between two people and only speculative evidence, at best, that another person was involved?

As a general proposition, the State is correct to state, "'If there is any evidence to warrant a jury instruction a trial court must, upon request, give the instruction.' *State v. Campbell*, 443 S.C. 182, 193, 904 S.E.2d 441, 446 (2024)" BoR at 21. This principle is not proper when the charge is a theory of the State to sustain a conviction. The reason is simple. To survive a directed verdict in a circumstantial evidence case such as this, the state must produce substantial

circumstantial evidence to avoid a directed verdict. If the requirement for a jury charge is "any evidence" then the jury charge is given when the evidence is not legally sufficient to convict. This issue as to the jury charge is different from the issue of a directed verdict. The directed verdict question is based upon all the evidence and the inferences to be drawn from the facts. As to a jury charge, this court should examine only the facts that relate to the issue of whether there is substantial circumstantial evidence to justify the requested jury charge.

The State fails in its attempt tp justify the charge on several grounds. First the testimony of Jennifer Setree is not sufficient to establish substantial circumstantial evidence there was another person in the automobile. She testified, "It appears as though there is possibly a passenger or someone in the vehicle with a blue-in-color shirt or jacket and it seems though the driver is wearing a white, white shirt." ROA at 975, ll 3-5. On cross-examination, she stated there could be a dog on the passenger seat. She stated:

> Q. (By Mr. Scott) How are you so sure?
> A. (By Ms. Setree) There's a dog in the car.
> Q. You see a dog in the car?
> A. Yes
> Q. Where's the dog?
> A. On the zoomed photo.
> Q. Did you testify – is the dog driving the car?
> A. It's in the passenger's seat.
> ROA 1005, ll 16-23.

This court can take judicial notice that the laws of physics prohibits two objects from occupying the same space at the same time. If a dog is in the passenger seat, a person is not in the passenger seat. This testimony may pass the "any evidence" standard. It does not pass the "substantial circumstantial evidence" test. As there is no substantial circumstantial evidence another person was in the automobile, the trial court erred in giving such a charge.

The State has also failed too acknowledge the total lack of evidence of any agreement as to the other person. The hand of one is the hand of all requires the state to prove an agreement between the parties. Mere presence is not enough. "To be guilty as an aider or abettor, the participant must have knowledge of the principal's criminal conduct. Mere presence at the scene is not sufficient to establish guilt as an aider or abettor." *State v. Zeigler*, 364 S.C. 94, 107, 610 S.E.2d 859, 866 (Ct. App. 2005)(internal citations omitted).

The state has further argued because trial counsel argued there had to be more than one person, the charge was proper. This court needs to acknowledge, that the state never indicted Mr. Stevenson as an accessory. The defense counsel could have made the exact same argument had the hand of one is the hand of all charge not been given. The State had intended to prosecute the case claiming Mr. Stevenson was the shooter. The argument of defense counsel is not a basis to justify the giving of a hand of one is the hand of all charge. Even defense counsel did not argue both people had knowledge.

As substantial circumstantial evidence did not exist to justify the charge of accomplice liability, this court should reverse the conviction of Mr. Stevenson and remand for a new trial.

Conclusion

For the foregoing reasons and for the reasons set forth in the opening brief, as to Question I, this Court should remand the case to the lower court to determine if the discovery violation was willful and instruct the lower court, if the violation was willful to prevent the evidence from being admitted at any new trial. As to Issue II, the conviction should be reversed and the case dismissed. As to Issue III, the case should be reversed and remanded for a new trial.

12-11, 2025

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief of Appellant complies with Rule 211(b), SCACR.

12-17, 2025

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