STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Honorable Danile Coble, Circuit Court Judge

Appellate Case No. 2024-000890

THE STATE, ...RESPONDENT

v.

TROY CHRISTOPHER STEVENSON, JR.,.....APPELLANT.

FINAL BRIEF OF RESPONDENT

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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?

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?

STATEMENT OF THE CASE

The Richland County Grand Jury indicted Appellant, Troy Christopher Stevenson, Jr., at its April 2022 term of general sessions for the murder of Charlie Jackson, Jr., and for possession of a weapon during the commission of a violent crime.[1] (R. p. , Indictment No. 2022-GS-40-1884 and 1885). A jury trial on the charges was scheduled to begin in May of 2024. The Honorable Daniel Coble heard pretrial motions on May 13, 2024. On May 14, 2024, Judge Coble ruled on the motions, the jury was seated, and the trial began. On May 22, 2024, the jury convicted Appellant of murder but acquitted him on possession of a weapon. (R. p. 1214). On May 23, 2024, Judge Coble sentenced Appellant to life imprisonment. (R. 1231). This appeal now follows.

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[1] Appellant was also initially charged with discharging a firearm into a dwelling but not indicted. That was dismissed following the trial for these charges. *See https://publicindex.sccourts.org/Richland/PublicIndex/CaseDetails.aspx?County=40&CourtAgency=40001&Casenum=2021A4011200384&CaseType=C&HKey=686512210510843118871055511889768012178115536872661036911587741218565791125410711153815748811077212089* (Case Number 2021A4011200384).

STATEMENT OF FACTS

On the night of April 6, 2021, a violent chain of events unfolded from inter-personal disputes that ultimately led to the fatal shooting of Charlie Jackson (Victim), an innocent bystander lying in his bedroom watching TV at his home at *** Devoe Drive.

Jasmine Martin, who was staying at the home of Appellant's mother on Lucille Drive (which was a short distance from Devoe Drive, R. p. 639) testified she was drinking with Jalanda Tobias and others on that night. Tamira Jackson—Victim's daughter—and her companion Dai'Juan Richardson, arrived to pick up Martin. Jackson and Tobias had a pre-existing feud since both had relationships with Richardson. When Martin was getting ready to leave with Richardson and Jackson, Tobias saw a fight start in front of the Lucille Drive residence. (R. p. 33–38). During the altercation, Jamaree Jeffcoat, who was romantically involved with Tobias, intervened and began "mushing" Jackson in the face. Richardson stepped in to defend her, and Jeffcoat struck him in the head with a tequila bottle and beat him up. Richardson and Jackson then left the scene. (R. p. 38–41). Shortly after the fight, 17 rounds were fired into the Lucille Drive residence at approximately 2:11 AM, which was captured by ShotSpotter technology. (R. p. 334-335). This first shooting was later attributed to Richardson, who reportedly told Jackson that he had fired at the house. (R. p. 281-282).

After the shooting at Lucille Drive, Appellant and his girlfriend Ashley Carter were notified that Appellant's mother's house had been shot up. They were both staying at Carter's house on Margate Street at that time. (R. p. 362, 365). Martin testified that, shortly after the shooting, Appellant called her and said, "What the fuck your people got going on? They just shot up my mama house." (R. p. 42). After the phone call, Carter stated that Appellant left her house. Carter told law enforcement that although Appellant himself owned a black Hyundai that he would keep at Carter's house, he frequently drove her black Honda Accord, using it for errands. When he left

her house shortly after hearing about the shooting, Carter stated Appellant left with her black Honda. (R. p. 363-367, 382-386, 478). Surveillance footage from the area of *** Devoe Drive home captured a dark-colored sedan consistent with Carter's Honda turning onto the street at the time of the shooting. The vehicle was later identified as having a defective brake light, a detail that matched the condition of Carter's car when it was examined by law enforcement. (R. p. 486-489, 514-517).

At approximately 2:37 AM—eight minutes before the shooting—Appellant received Facebook messages from Tobias' sister that read "209 Devoe Drive" and "That's that gal [Jackson] address."[2] (R. p. 473-477).

At 2:45 AM, about half an hour after the shooting of Appellant's mother's house, 14 rounds were fired into the Devoe Drive home. These shots were also detected by the ShotSpotter system. (R. 335-337). Charlie Jackson, Tamira's father, was struck while lying in bed and later died from his injuries. Jackson testified that Richardson and another individual, C.J., were in the house with her at the time of the shooting but were gone by the time law enforcement arrived. (R. p. 283-285).

At 2:48 AM—three minutes after ShotSpotter detected gunfire at the Devoe Drive residence—Appellant sent a Facebook message to Carter, stating he was on his way back and at 3:01 AM, he sent another message indicating that he was being serious when Carter expressed doubt regarding his prior message. (R. p. 372-373, 514-515, 688-689).

Investigator Scott McDonald testified that cell site location information (CSLI) was used to track Appellant's movements. The data showed that Appellant's phone left the Margate address, where he had been staying with Carter, traveled to Lucille Drive (his mother's residence), then to Devoe Drive, and finally returned to Margate after the shooting at ***Devoe Drive. (R. p. 611-

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[2] These messages were then later "unsent." (R. p. 694-695).

617, 624-631). This digital trail was consistent with the Facebook messages Appellant received at 2:37AM containing the Devoe address, the ShotSpotter data showing gunfire at 2:45 AM at Devoe, and his return messages to Carter at 2:48 AM stating he was on his way back to Margate.

As indicated above, at the end of trial, the jury convicted Appellant as indicted.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006) (citing *State v. Wilson,* 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001)). It "is bound by the trial court's factual findings unless they are clearly erroneous" *Id.* (citing *State v. Quattlebaum,* 338 S.C. 441, 452, 527 S.E.2d 105, 111 (2000)).

Discovery Rulings

"A trial court's rulings in matters relating to discovery generally will not be disturbed on appeal in the absence of a clear abuse of discretion," *i.e.,* either an "error of law" or lack of factual support. *State v. Daise*, 421 S.C. 442, 463, 807 S.E.2d 710, 721 (Ct. App. 2017) (quoting *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 537, 787 S.E.2d 485, 495 (2016) (citation omitted)).

Directed Verdict

"If there is any direct evidence or any 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." *State v. Bailey*, 368 S.C. 39, 45, 626 S.E.2d 898, 901 (Ct. App. 2006) (quoting *State v. Lollis,* 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001)).

Jury Instructions

"An appellate court will only reverse a trial judge's decision regarding jury instructions" only where the decision "constitutes an abuse of discretion resulting in prejudice." *State v. Swaringen*, 446 S.C. 16, 27, 916 S.E.2d 343, 349 (Ct. App. 2025) (citing *Clark v. Cantrell*, 339 S.C. 369, 389-90, 529 S.E.2d 528, 539 (2000)).

ARGUMENT

I. **The trial judge did not abuse his discretion in denying Appellant's motion to suppress testimony related to the black Honda Accord's defective brake light when the information was disclosed to the defense prior to the presentation of the evidence and did not deprive Appellant of a fair trial.**

Relevant Facts

On May 13, 2024, the day before trial, the trial judge heard Appellant's pre-trial motions which included a motion to dismiss for discovery and due process violations, and a motion to dismiss for a speedy trial violation. (R. p. 4). The parties placed their arguments on the record, and the trial judge took the motions under advisement at the conclusion of the hearing. The trial judge ruled the next morning, denying both of Appellant's motions.

At the pre-trial motion hearing, Counsel Zmroczek raised multiple instances alleging that the State violated discovery rules by failing to provide requested information. The State first referenced the "Honda Accord exchange" as follows:

> There's a number of times, for instance, here is April 2nd, I sent her this. We went to the impound lot to look at Ashely Carter's black Honda last week. "Let me know if you need for us to arrange for you to do the same." Here's my response: "Yes." I wrote back. I said, "You're going to have to give me a more responsive reply than that so I can help you." Nothing.

(R. p. 17).

In response, Counsel Zmroczek referenced an additional email that she sent in reply:

> So my response: "Yes." His response: "You're going to have to give me a more responsive reply than that." And he sent that at 1:51. And then if you look at the next page at 2:04, I respond: "Yes. I would have liked to look at the evidence when you did since I had previously asked to see all of the evidence. Please set up a viewing for me and my staff this week or provide me the number of the person I need to call to set up the viewing of all the evidence that I previously requested to see. I have available time Thursday afternoon and Friday. Thank you." And then there's no response.

(R. p. 19).

The next morning, the trial judge denied Appellant's motion to dismiss based on discovery violations. He first noted that dismissal of the case based on due process and discovery violations is the most drastic remedy. (R. p. 9). The trial judge stated that he did not believe that there were any intentional or willful acts by the State to conceal evidence and that the circumstances appear to reflect a "bad relationship between counsel," however such does not rise to the level of dismissal. (R. 9-10). He stated that the ruling does not close the door to suppressing any particular evidence on a case-by-case basis and does not close the door to a spoliation charge depending on how the trial plays out. (R. p. 10).

The next day on May 14th, Counsel Zmroczek advised the court that she received an email at 1:17PM that day from Solicitor Scott that Ashley Carter's black Honda Accord that was impounded had a defective taillight. (R. p. 344). She reminded the court that the State never arranged for her to look at the Honda Accord at the impound lot. (R. p. 344-345). After the trial judge inquired into the factual relevancy of the defective taillight, Solicitor Scott advised that he intended to ask Carter if she knew whether the taillight in her vehicle was broken, acknowledging that he was "stuck" with her answer. (R. p. 347). Counsel Zmorczek then inquired if there was going to be a witness to testify that the taillight was defective, to which Solicitor Scott responded that the testimony would be in the form of "[i]n watching the video, it appears to me the brake light is out." (R. p. 347). He added that the testimony would be from Investigator Oxendine. (R. p. 348). The trial judge instructed that the parties needed to arrange to look at the Honda Accord at the impound lot before the evidence is presented. (R. p. 348). After a brief break, Solicitor Fowler advised the court that Counsel Zmroczek was scheduled to view the Honda Accord directly after the conclusion of court proceedings that day. (R. p. 349).

The issue next arose on direct examination of Carter when the State asked her if the Honda Accord had a faulty brake light, which Carter responded that it did not. (R. p. 366). Counsel Zmroczek again raised the issue to the court, moving to dismiss the charges based on a *Brady* violation. (R. p. 418). She additionally asked that any reference to the brake lights be excluded and that under *Riddle*, it falls under the "exculpatory - - or inculpatory." (R. p. 418). She argued that the car had been at the impound lot for three years. She further stated that she asked for the towing policy and the prosecution sent the policy at 8:30AM that morning along with a copy of the inventory of the vehicle which was not included in the original discovery. (R. p. 418-419). Solicitor Scott responded that after watching hours of video, it was noticed that a brake light appeared to be out, and it was decided that they make arrangements to examine the evidence, which is why he sent Counsel Zmorczek an email notifying her that they were going to the impound lot to examine the Honda. (R. p. 419-420). He clarified that the broken taillight was discovered by the solicitor's office and not by law enforcement. (R. p. 420).

The trial judge denied both the motion to dismiss and the motion to suppress reasoning that he remedied the situation when he ordered that the parties arrange to see the Honda the day before. (R. p. 420-421). His ruling in full is as follows:

> So the question -- hold on. We addressed this yesterday. The email, I have that. I believe that's a court's exhibit about it's [sic] within your other discovery motions, Exhibit H.
>
> For this to be a dismissal, the extreme remedy, I described earlier what my standard is and what I believe the Supreme Court has made clear, it has to be something intentional, something completely reckless, something that would violate prosecutorial misconduct. That's what I'm looking for.
>
> This car had been sitting in the impound for three years. It was attempted to be seen by the defense in April, which is fine. From the email exchange I have, from the evidence I have, okay -- I don't know what's been going on since '21, I haven't been around

> that long, all right -- the exchange happened. And Mr. Scott should have -- you are right, you tried to get it setup. And so to remedy that, I made a requirement that you all go see the car last night. I believe that is sufficient for this type of issue.
>
> I'm still open to the other issue, which is a suppression/spoliation charge. The dismissal, my ruling still applies. There was no high level of intent or reckless disregard, prosecutorial misconduct as to your motion to suppress, and I'm denying that based on the curative issue of going to the impound last night.
>
> I'm still open – haven't made a decision yet about a spoliation charge to the jury.

(R. p. 420-421).

As to further testimony presented by the State regarding the broken brake light, Investigator Taima Jordan with the Richland County Sheriff's Department testified that in review of footage from (State's Exhibit 24) she noticed that the back right passenger brake light was out. (Trial Tr. 327). Investigator Jordan testified that Carter's car was impounded on May 12, 2021, and initially the brake lights were not examined. (R. p. 515-516). She confirmed that the solicitor called her office to ask if they had noticed that a brake light was out on the Honda Accord. (R. p. 516). Upon their request, she went to the impound lot and started the vehicle and noticed that the back passenger taillight was out. (R. p. 516).

Discussion:

A trial court abuses its discretion in denying relief on a discovery motion if its "order is controlled by an error of law or when there is no evidentiary support for the trial court's factual conclusions." *State v. Daise*, 421 S.C. 442, 463, 807 S.E.2d 710, 721 (Ct. App. 2017) (quoting *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 537, 787 S.E.2d 485, 495 (2016) (citation omitted)). Review of the trial court's factual basis for the ruling is deferential: "Appellate courts are bound by fact findings in response to motions preliminary to trial when the findings are supported by the evidence and not clearly wrong or controlled by error of law." *State v. Amerson*,

311 S.C. 316, 320, 428 S.E.2d 871, 873 (1993) (citing *City of Chester v. Addison,* 277 S.C. 179, 284 S.E.2d 579 (1981)).

Here, Appellant argues that the trial court abused its discretion when the court failed to suppress testimony related to the defective brake light identified on Carter's black Honda Accord when the prosecution notified the defense on the first day of trial that the Honda had a defective taillight. The day before the start of trial, the trial judge ordered that the parties arrange for defense counsel to view the Honda in the impound lot. The next afternoon, the prosecution notified defense counsel that the Honda had a defective brake light and also sent other documents that she requested the day prior.

In arguing the motion to dismiss, and alternatively to suppress any mention of the defective brake light, defense counsel relied on *Brady* and *Riddle* in asserting that the prosecution intentionally kept the information from her. In denying the motion to suppress, the trial judge determined that issue was remedied considering defense counsel was able to see the Honda the night before, and that "there was no high level of intent or reckless disregard, prosecutorial misconduct as to your motion to suppress." (R. p. 421). Appellant appears to rely on the requirements of Rule 5 to support his argument, arguing that the prosecution's failure to disclose the relevant information was either intentional or grossly negligent," (*see* BOA at 8-9) and that the defense strategy would have changed had the information been disclosed. (*See* BOA at 10). Notably, defense counsel did not explicitly specify what section of Rule 5 she was basing her argument.

The evidence in question is the black Honda Accord that was located at the impound lot, and more specifically, that the vehicle had a defective taillight. Rule 5(a)(1)(C) requires:

> Upon request of the defendant the prosecution shall permit the defendant to inspect and copy books, papers, documents,

> photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant.

"Evidence is material ... 'only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome.'" *State v. Cain*, 297 S.C. 497, 503, 377 S.E.2d 556, 559 (1988) (citing *Bagley*, 473 U.S. at 682). To be sure, Appellant knew the "object" at issue was the black Honda Accord and knew where the vehicle was located. That alone should be sufficient to show no error. Further, there was no discovery issue regarding the video footage depicting the vehicle in question. Even so, the materiality definition used in *Brady* is used in the same context for purposes of Rule 5. *State v. Kennerly*, 331 S.C. 442, 453, 503 S.E.2d 214, 220 (Ct. App. 1998), *aff'd*, 337 S.C. 617, 524 S.E.2d 837 (1999). "In a *Brady* analysis, information is not deemed "material" if the defense discovers the information in time to adequately use it at trial." *Id.*

"Once a Rule 5 violation is shown, reversal is required only where the defendant suffered prejudice from the violation." *Id.*, 331 S.C. at 453-454 (citing *State v. Trotter*, 322 S.C. 537, 473 S.E.2d 452 (1996); *State v. Wilkins*, 310 S.C. 81, 425 S.E.2d 68 (Ct.App.1992)). The requirements of Rule 5 are to ensure a criminal defendant receives a "fair trial" by requiring production of documents that are material to the preparation of his or her defense. Failure to disclose information only warrants a reversal if prejudice stemmed from the nondisclosure such that it deprived the defendant of a fair trial. *State v. Gathers*, 295 S.C. 476, 369 S.E.2d 140 (1988), *aff'd*, 490 U.S. 805, 109 S. Ct. 2207, 104 L. Ed. 2d 876 (1989).

Simply stated, the evidence here is not material for purposes of Rule 5. The information was provided to defense counsel prior to the presentation of testimony, albeit the first day of trial, regarding the defective taillight. The evidence was not exculpatory considering it was used to connect Appellant to the vehicle caught on video footage to Carter's vehicle that was ultimately identified as the same vehicle and would not have aided in his defense. Defense counsel did not ask Carter or Investigator Jordan any questions regarding the broken taillight. In closing, defense counsel was adequately able to contest the information, noting the length of time the vehicle had been located at the impound lot:

> Ashley Carter was hounded over, and over, and over about the two different vehicles. This vehicle, which we know is at the impound lot, again, that we don't have a picture of showing the broken taillight. They want to say, well, it was broken. But Investigator Holt's report, who examined that car the day they got it in May of 2021, doesn't mention that in here. We don't have any pictures of that so we just have to take Investigator Jordan's word on it.

(R. p. 1167-1168).

Thus, no Rule 5 violation occurred. Even if this Court interprets the trial judge's ruling to remedy the delayed disclosure as a Rule 5 violation regarding the broken brake light rather than the access to view the Honda at the impound lot, it is within the judge's discretion to determine the appropriate remedy. *State v. King*, 367 S.C. 131, 138, 623 S.E.2d 865, 868 (Ct. App. 2005).

Appellant speculates that he was prejudiced because the defense strategy would have changed had the information been provided earlier. Standing alone, the assertion cannot be considered sufficient considering it was not helpful to the defense and was not any more incriminating than the CSLI records and Facebook messages that were used to place Appellant at the scene at the time of the shooting. Even if the delayed disclosure is considered to be a Rule 5

violation, it could not have reasonably prejudiced Appellant to the extent, if at all, that he was denied his right to a fair trial.

In large part, Appellant's argument is based on the premise that the prosecution's failure to disclose the relevant information was either intentional or grossly negligent. (*See* BOA at 8-9). Appellant alleges that the trial judge should have inquired further into when the prosecution learned of the defective brake light and why the information was not disclosed to the defense when it was discovered. (*See* BOA at 8-9). Appellant overlooks the relevant materiality of the evidence and instead asserts that prejudice should be presumed considering the violation – absent an argument supporting that a Rule 5 violation occurred. Even so, Appellant fails to recognize the discretionary power of the court and further fails to demonstrate how the trial judge abused his discretion in this matter considering he cannot establish the appropriate prejudice.

II. The trial judge properly followed controlling law when he denied the defense's motion for directed verdict given there was evidence, if believed, to support each of the charges thus requiring the case to be submitted to the jury.

Relevant Facts:

After the State rested, Appellant renewed several motions and also made a motion for a directed verdict. (R. p. 751). Appellant argued: "There has been no testimony that any sort of weapon, any sort of ammunition, any sort of anything was found, or related, or connected to Mr. Stevenson. And so we would ask, that given the very circumstantial nature of this evidence, that a verdict be granted in this case." (R. p. 751-752). The State noted the compressed timeframe from Appellant's learning of the Lucille Drive shooting, calling about the shooting and receiving information on the shooting including the victim's home address, the video showing a black Honda connected to Appellant at the Devoe residence at the time of the shooting, and cell phone location information that is consistent with Appellant's phone traveling to the scene of the murder. (R. p. 752-754). The judge found that reviewing the evidence in the light most favorable to the State and considering the existence of evidence and not its weight, the motion would be denied. (R. 755).

Appellant simply renewed the motion at the close of the defense case. (R. p. 1072-1073). Appellant argued that "the evidence does not comply with Rule 19(b), SCCrimP and rises to the level of substantial circumstantial evidence in this case." (R. p. 1073). The trial court found that "evidence still exists in the light most favorable to the nonmoving party" sufficient to defeat the motion. (R. p. 1073). Appellant generally renewed the motion again after presentation of the State's reply. (R. p. 1089). After the verdict, Appellant again generally renewed the prior motions. (R. p. 1217-1218).

Discussion:

"If there is any direct evidence 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." *State v. McHoney*, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001) (citing *State v. Pinckney*, 339 S.C. 346, 529 S.E.2d 526 (2000)). In conducting a review of the record in context of a directed verdict issue, appellate courts must "consider[] the evidence and all reasonable inferences in the light most favorable to the State." *State v. Bennett*, 415 S.C. 232, 235, 781 S.E.2d 352, 353 (2016) (quoting *State v. Butler*, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014)). Further, "review is limited to considering the existence or nonexistence of evidence, not its weight." *Id.* (citing *State v. Cherry*, 361 S.C. 588, 593, 606 S.E.2d 475, 478-79 (2004)). Essentially, "the trial court is concerned with the existence of evidence, not its weight" and so is the appellate court in review. *State v. Bailey*, 368 S.C. 39, 44–45, 626 S.E.2d 898, 901 (Ct. App. 2006).

Appellant submits that he was entitled to a directed verdict in his favor because (1) the evidence did not show that he had a weapon that could have been used in the shooting; and (2) the evidence only showed his cell phone in the area at the time of the shooting, not Appellant personally. (BOA at 14). Appellant is wrong both in his legal analysis and his factual arguments.

Initially, Appellant's argument on the law overlooks or misapprehends the law. Appellant asserts he is entitled to a *de novo* review of a question of law. (BOA at 4). However, the question of submission of the case is a fact-intensive inquiry, not a standalone application of law. At bottom, the inquiry on appeal is virtually the same as in the lower court—whether *evidence exists* to support the elements of the crime, and here, of accomplice liability. *Bailey, supra.* See also SCRCrimP 19(a) ("On motion of the defendant or on its own motion, the court shall direct a verdict in the defendant's favor on any offense charged in the indictment after the evidence on either side is closed, if there is a failure of competent evidence tending to prove the charge in the indictment.

In ruling on the motion, the trial judge shall consider only the existence or non-existence of the evidence and not its weight.").

Appellant's argument that some different standard may be available is not supported in our controlling case law. Appellant concedes that our Supreme Court has recognized that review of a directed verdict issue "is necessarily fact-intensive[.]" (BOA at 15, quoting *State v. Bennett*, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016)). Further, he recognizes our Court has expressly instructed that such cases are "limited to their particular facts." *Id.* However, Appellant's argument that our Court has not adequately explained its rulings on the standard of review, and, as such, the existing standard of review essentially restricts appellate courts "from looking objectively at all the evidence and concluding there is a reasonable explanation of innocence" misses the mark—by a wide margin. Indeed, *Bennett* soundly rejects that argument.

In *Bennet,* our court considered the review necessary and not only addressed but expressly rejected the same type of argument Appellant forwards; that courts should "look for an alternative explanation" other than guilt. (*See* BOA at 16). Our Court resolved that the argument is directly contrary to our longstanding state jurisprudence:

> As this Court clarified in *State v. Littlejohn,* 228 S.C. 324, 89 S.E.2d 924 (1955), 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. Within the jury's inquiry, "it is necessary that every circumstance relied upon by the state be proven beyond a reasonable doubt; and that all of the circumstances so proven be consistent with each other and, taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis." *Id.* at 328, 89 S.E.2d at 926. However, when 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." *Id.* at 329, 89 S.E.2d at 926. Therefore, although 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. This objective test is founded upon reasonableness.

Bennett, 415 S.C. at 236–37, 781 S.E.2d at 354 (emphasis in original).

To the extent Appellant suggests another standard is available even though our Supreme Court has instructed otherwise, this Court must reject Appellant's argument. *See* S.C. Const. art. V, § 9 ("The decisions of the Supreme Court shall bind the Court of Appeals as precedents.").

Appellant also argues our Court has not defined "substantial circumstantial evidence," while undermining fair consideration. (*See* BOA at 16). Yet, it would appear that a close reading of our precedent does support guidance to the reviewing courts where circumstantial evidence is at issue: "If the state has presented 'any direct evidence or any substantial circumstantial evidence *reasonably tending to prove* the guilt of the accused,' this Court must affirm the trial court's decision to submit the case to the jury." *State v. Hepburn,* 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013) (quoting *State v. Cherry,* 361 S.C. 588, 593-94, 606 S.E.2d 475, 478 (2004)). Simple "suspicion" is not enough. *Hepburn,* 406 S.C. at 429, 753 S.E.2d at 409 (quoting *Cherry*, 361 S.C. at 593, 606 S.E.2d at 478). Again, our courts have long recognized that the "objective test is founded upon reasonableness." *Bennett,* 415 S.C. at 237, 781 S.E.2d at 354. To put a fine point on it, the analysis boils down to "whether the evidence presented *is sufficient to allow a reasonable juror* to find the defendant guilty beyond a reasonable doubt." *Id.* (emphasis added). Appellant's argument that South Carolina's standard is infirm as it suggests *any* evidence will defeat the motion does not square with a plain reading of the precedent.

Further, Appellant errs in his argument on the facts. As a general point, Appellant appears to argue that which is reserved for the jury, *i.e.*, what evidence should be believed. (*See* BOA at 14-17). That simply is not the inquiry to be made here. More specifically, Appellant has argued that the "record is barren of any evidence of an agreement," so that the jury could use accomplice

liability in finding guilt. (BOA at 17). This argument is not preserved as it was not raised below. *State v. Curtis*, 356 S.C. 622, 634, 591 S.E.2d. 600, 606 (2004). Even so, it is without merit because it lacks recognition of the fact that "[a]ccomplice liability can be proven by circumstantial evidence." *Campbell*, 443 S.C. at 193, 904 S.E.2d at 446. Most specifically, the *defense* introduced evidence that two people were in the car from which the bullets were fired. (R. p. 975). At 2:14 AM Appellant's phone placed a call to Jeffcoat's phone, and at 2:18, a call from Jeffcoat's phone went to Appellant's phone. (R. p. 630-631). And again, at 2:19 and 2:26 AM Appellant's phone called Jeffcoat's. (R. p. 631). Jalanda Tobias, who was romantically involved with Jeffcoat and hit Richardson with a bottle and beat him in the initial altercation, gave Appellant the address for the attack at 2:37 AM. (R. p. 38-41; 473-477). At 2:45 AM, the fatal barrage was fired. Further, Appellant's phone connected to a tower in close proximity of Lucille, then Devoe. (R. p. 626-630). There is certainly circumstantial evidence of intense communication and coordination resulting in the shooting. Motive, knowledge, means and opportunity are powerful considerations and those considerations are present.

Given there is substantial circumstantial evidence supporting accomplice liability, Appellant's argument he was entitled to a directed verdict must be rejected.

III. The trial judge properly instructed the jury on hand of one, hand of all as a separate theory of liability when there was evidence that another participated in the criminal act of shooting into the victim's home which resulted in the murder where a mutual agreement to commit the criminal act was shown through circumstantial evidence.

Relevant Facts:

The defense called Jennifer Setree, who testified that she worked in digital forensics, and after enhancing the photos from two videos showing the scene and other videos, she identified two people in the car. (R. p. 931-940; 975). Just prior to the close of the defense case, the State submitted both a "hand of one, hand of all" along with other instructions for the trial court to consider. (R. p. 1073-1074). Defense counsel argued they would "have an issue with hand of one, hand of all when it's been one person the whole time." (R. p. 1074). The trial judge, however, noted, "[t]hings have changed at this point," but indicated that he would allow argument on the charge. (R. p. 1074).

The trial court then returned to the instructions prior to closing arguments. As to the hand of one, hand of all charge, the State argued that the evidence from Witness Setree was that there was a passenger in the car from which the shots were fired. (R. p. 1100). The trial court also noted that testimony was offered about "a person in blue," but even before that, the defense had questions that elicited "Jordan or someone clarifying that his cellphone was ... in the vicinity." (R. p. 1101). The State offered even if accomplice liability was not their theory, it still had "to be able to counter" the defense's position that it was not Appellant who did the actual shooting. (R. p. 1103). The trial court found that instruction was warranted where the testimony identified two separate people–and later in cross-examination, a dog also in the front passenger seat – of the vehicle from which the bullets were fired. Specifically, the record shows that she testified, "It appears as though there is possibly a passenger, or someone in the vehicle with blue-in-color shirt or jacket, and it seems though the driver is wearing a white, a white shirt." (R. p. 975-1015).

At the beginning of trial proceedings on May 22, 2024, the trial court reviewed the potential jury instructions with counsel. (R. p. 1111). Appellant requested a third-party guilty instruction since the trial court indicated it would give the hand of one, hand of all instruction. (R. p. 1113). The trial court declined the request finding, "the facts would just show they did it together, not that he wasn't there." (R. p. 1113-1114). After arguments, the trial judge instructed on hand of one, hand of all as part of his charge to the jury. (R. p. 1186-1188). After the jury convicted, defense counsel again noted the objection to the hand of one, hand of all charge. (R. p. 1217).

Discussion:

"The law to be charged must be determined from the evidence presented at trial." *State v. Cole*, 338 S.C. 97, 101, 525 S.E.2d 511, 512 (2000) (citing *State v. Lee,* 298 S.C. 362, 380 S.E.2d 834 (1989)). "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) (citing *State v. Smith*, 391 S.C. 408, 412, 706 S.E.2d 12, 14 (2011), citing *State v. Shuler*, 344 S.C. 604, 632, 545 S.E.2d 805, 819 (2001)). "A jury charge is appropriate if it is substantially correct and adequately covers the law applicable to the case." *State v. Swaringen*, 446 S.C. 16, 27, 916 S.E.2d 343, 349 (Ct. App. 2025) (citing *State v. Foust*, 325 S.C. 12, 16, 479 S.E.2d 50, 52 (1996)).

"[U]nder the 'hand of one, the hand of all theory,'" a defendant may be found guilty if there is evidence he "joins with another to accomplish an illegal purpose" thus becomes "liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." *State v. Langley,* 334 S.C. 643, 648, 515 S.E.2d 98, 101 (1999). "Accomplice liability can be proven by circumstantial evidence." *Campbell*, 443 S.C. at 193, 904 S.E.2d at 446. A charge on "hand of one, hand of all" in a case where there is a death by gunshot, "the question is whether there is any evidence that another co-conspirator was the shooter and [defendant] was

acting with him when the [shooting] took place.'" *Barber v. State*, 393 S.C. 232, 237, 712 S.E.2d 436, 439 (2011). Key to the analysis of whether the charge is appropriate is whether the record shows the defendant was by agreement acting with an another in the criminal event, and that the co-conspirator could have been the shooter. *State v. Washington,* 431 S.C. 394, 409, 848 S.E.2d 779, 787 (2020).

Here, the defense presented evidence that another person was in the car. (R. p. 975). That prompted the request for a hand of one, hand of all charge. (R. p. 1073-1074). Rightfully so.

In context, at 2:14 AM Appellant's phone place a call to Jeffcoat's phone, and at 2:18, a call from Jeffcoat's phone went to Appellant's phone. (R. p. 630-631). And again, at 2:19 and 2:26 AM Appellant's phone called Jeffcoat's. (R. p. 631).

Notably, defense counsel argued that the evidence did not support that Appellant both drove and shot from the driver's side: "... under the State's theory, [Appellant] is driving ... the vehicle ... and you all can go back watch it in regular speed as well - - and that that, while driving, hold this gun out of the car and is able to shoot 14 rounds without swerving, without having any flashes, and that he was able to hit tops of houses, under ... the air-conditioning unit, obviously all through the Trailblazer, one person ..." (R. p. 1160-1161).

CONCLUSION

For all the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

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