RECEIVED
Jan 12 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Alex Kinlaw, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TYRIESE N. ROBINSON,

APPELLANT

APPELLATE CASE NO. 2024-000963

FINAL BRIEF OF APPELLANT

WANDA H. CARTER
Chief 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 CONTENTS i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL 1

STATEMENT OF THE CASE 2

STANDARD OF REVIEW 3

ARGUMENT

The court abused its discretion by refusing to direct a verdict of acquittal where the state failed to present any direct or substantial circumstantial evidence that appellant shot and killed the victim or was aiding and abetting another person in the victim's shooting since appellant was entitled to a directed verdict under these circumstances. 4

Relevant facts 4
Directed verdict motion 14
Discussion 14

CONCLUSION 22

TABLE OF AUTHORITIES

South Carolina Cases

State v. Barroso, 328 S.C. 268, 493 S.E.2d 854 (1997) 15

State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011) 15, 17, 18, 19

State v. Hepburn, 406 S.C. 416, 753 S.E.2d 402 (2013) 3, 5, 15

State v. Hill, 268 S.C. 390, 234 S.E.2d 219 (1977) 16

State v. Jenkins, 278 S.C. 219, 294 S.E.2d 44 (1982) 3, 5, 20

State v. Langley, 334 S.C. 643, 515 S.E.2d 98 (1999) 15

State v. Leonard, 292 S.C. 133, 355 S.E.2d 270 (1987) 15

State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2011) 15, 18, 19

State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000) 15, 16, 17

State v. Mattison, 388 S.C. 469, 697 S.E.2d 578 (2010) 15

State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000) 15, 16

State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011) 15, 18, 19

State v. Schrock, 288 S.C. 129, 322 S.E.2d 450 (1984) 15, 17

State v. Venters, 300 S.C. 260, 387 S.E.2d 270 (1990) 3, 5, 20

Wilson v. Wilson, 319 S.C. 370, 461 S.E.2d 816 (1995) 15

Other Jurisdictions

State v. Ashworth, 248 N.C. App. 649, 651, 790 S.E.2d 173 (2016) 20

State v. Chukwu, 230 N.C. App. 553, 749 S.E.2d 910 (2013) 20

STATEMENT OF ISSUE ON APPEAL

Whether the court abused its discretion by refusing to direct a verdict of acquittal where the state failed to present any direct or substantial circumstantial evidence that appellant shot and killed the victim or was aiding and abetting another person in the victim's shooting since appellant was entitled to a directed verdict under these circumstances?

STATEMENT OF THE CASE

Appellant was indicted at the December 7, 2021 term of the Greenville County grand jury for the offenses of murder and possession of a weapon during the commission of a violent crime. R. 396-397. His case was called to trial on May 28, 2024 before the Honorable Alex Kinlaw, Jr. and a jury. William Ryan Holloway and Edward W. Miller were the assistant solicitors. Justin Kata represented appellant. R. 1.

On May 31, 2024, the jury found appellant guilty on both counts. R. 391, ll. 14-22. Judge Kinlaw sentenced appellant to forty-five years' imprisonment for murder, and he imposed a five-year consecutive sentence for possession of a weapon during the commission of a violent crime. R. 394, l. 15 – 395, l. 1.

This appeal follows.

STANDARD OF REVIEW

"A case should be submitted to the jury when the evidence is circumstantial 'if there is any substantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced.'" State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011) (quoting State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)). "Evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt." Id. Unless there is a failure of *competent evidence* tending to prove the offense charged, the trial judge should refuse a defense motion for a directed verdict of acquittal. State v. Venters, 300 S.C. 260, 264, 387 S.E.2d 270, 272 (1990); State v. Jenkins, 278 S.C. 219, 294 S.E.2d 44 (1982). (emphasis added).

"On appeal of the denial of a directed verdict of acquittal, this Court must look at the evidence in the light most favorable to the state." Id. at 139, 708 S.E.2d at 777; see also State v. Hepburn, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013). If the state failed to present any direct evidence or any substantial circumstantial evidence reasonably tending to prove guilt of the accused, the appellate court must reverse the lower court's denial of the directed verdict motion. Hepburn, 406 S.C. at 429, 753 S.E.2d at 409.

ARGUMENT

The court abused its discretion by refusing to direct a verdict of acquittal where the state failed to present any direct or substantial circumstantial evidence that appellant shot and killed the victim or was aiding and abetting another person in the victim's shooting since appellant was entitled to a directed verdict under these circumstances.

Relevant facts

There were no eyewitnesses claiming or identifying appellant as being the shooter of the victim at Highland Square Apartments in Greenville on the afternoon of September 26, 2020. R. 17, l. 15 – 21, l. 6. The apartment complex had security cameras, but the footage from those security cameras was partially blurry and inconclusive. See State's Exhibit 1 on file with this Court; R. 19, ll. 9-23.

Appellant was identified as being a man wearing a red shirt on State's Exhibit 1 around the time of the shooting. Another man in a black shirt was standing next to appellant at the time the state claimed that appellant or the other man in the black shirt shot the decedent. R. 307, l. 15 – 320, l. 4; See State's Exhibit 1; State's Exhibits 161; 165; 166 on file with this Court.

Lead investigator Jonathan Garrett said several people who may have had information about the Highland Square Apartment shooting were not cooperative. The man in the black shirt was never identified according to law enforcement. There was no phone or text messages showing appellant ever threatened the victim. Neither of the men with the victim when he was shot, Zamaria Franklin or Jaquon McGee testified. However, Garrett claimed that Jaquon

McGee allegedly said to someone that appellant was "shooting back" that day.[1] R. 310, l. 11 – 311, l. 3. R. 316, l. 13 – 319, l. 13.

Essentially, the victim's family suspected, as will be seen infra, appellant -- known as "AD" -- was the shooter because he was dating the victim's sister, and the victim's sister was estranged from their mother. Appellant purportedly sided with his girlfriend over the mother in the verbal battles that apparently ensued after their separation. Appellant was identified as being the man in the red shirt from the unclear videotape and still shots of the surveillance tape. He was not identified as having been the shooter. R. 307, l. 16 – 309, l. 23; State's Exhibit 1; State's Exhibits 122-123; State's Exhibits 161; 165; 166 on file with this Court.

Renada Riser was living at the Highland Square Apartments on September 26, 2020. R. 32, ll. 5-10. Riser went to the grocery store that afternoon to shop for herself, her four children, and her fiancé. R. 32, ll. 15-23. As she was taking the groceries out of her trunk upon her return, she remembered the victim walked by her. He said, "'Hey, ma'am. How are you doing?' and I spoke back. He walked on." R. 32, l. 17 – 33, l. 5. Riser said it seemed only seconds later, she heard gunshots and "I pushed my seven-year-old in the house." Riser thought she heard six-to-seven gunshots. R. 33, ll. 1-12.

Riser did not know the victim -- the young man who was shot -- but she remembered he was wearing a white t-shirt and blue jeans. R. 33, ll. 9-21. Riser did not see who shot the victim

---

1 This vague, out of left field assertion allegedly made by McGee, who refused to cooperate or testify, about appellant purportedly "shooting back" was hearsay and as argued infra, it should not be considered as "*competent evidence*" when determining if there was any direct or substantial circumstance evidence to warrant this case being submitted to the jury at the directed verdict stage. State v. Venters, 300 S.C. 260. 264, 387 S.E.2d 270. 272 (1990); State v. Jenkins, 278 S.C. 219, 294 S.E.2d 44 (1982); State v. Hepburn, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013). Further, it is unclear what this hearsay assertion even meant. If it *meant McGee was shooting back* at some unknown shooter that was not a prejudicial problem. However, if it is interpreted in any manner as stating McGee was claiming he saw appellant shooting a gun, back or otherwise, this was prejudicial hearsay and incompetent evidence.

because she was trying to ensure her children were safely inside her apartment when she heard the gunshots. "I just basically told them to hit the ground. Because, I mean, you know, bullets can fly anywhere. They can come through glass. And I pushed them in the middle of the hallway." R. 34, ll. 15-24.

Riser did not know from what direction the gunshots came from that hit "this young man." R. 35, ll. 7-20. She saw the victim's friends pick him up and they "threw him in the backseat [of the car] like he was a ragdoll."[2] R. 35, ll. 1-6. Riser called 9-1-1. R. 35, ll. 23-24. The following occurred on direct examination of Riser:

> Q Did you see any of the shooters -- or shooter?
>
> A I can't -- I don't know who was the shooter. I just seen a guy with all black and dreads. I can't say what his face looked like or anything.
>
> Q Did you see anybody else ---
>
> A No.
>
> Q --- firing?
>
> A No.
>
> Q Do you know if it was more than one person firing a gun?
>
> A There had to be because it was like it was coming from two different angles.
>
> Q What did the victim's friends do after they loaded him in the car?
>
> A They drove off.[3]

[2] Greenville Forensics Officer Brittany Brown testified this car "belonged to" Jacquan McGee. R. 88, ll, 1-10.

[3] The Forensic pathologist, Dr. Grace Dukes, testified the victim had "two perforating gunshot wounds, perforating meaning entrance and exit wit not retained projectiles." One gunshot wound was to the back and pelvis and the other was to the left thigh and pelvis. R. 96, ll. 3-10. Both were "arterial high-pressure" bleeds that resulted in the victim's death. R. 102, ll. 14-21.

R. 37, ll. 8-22. The police did not immediately locate a suspect. R. 44, ll. 17-19; R. 56, l. 21 – 57, l. 13.

Eugene Glover was Renata Riser's fiancé. R. 70, ll. 9-14. Glover was at Riser's apartment on the afternoon of September 26, 2020. R. 70, l. 20 – 112, l. 23. Glover would describe the shooting but acknowledged he did not see any of the shooters. R. 70, l. 23 – 71, l. 25.

Glover offered that he saw a car "coming up the hill." He watched two men get out of this car while the other man in the car was the driver. He heard a series of gunshots, and it sounded to Glover, a former Marine, like one of the weapons involved was "a high-caliber weapon." Glover was helping Riser get her children inside the apartment, but he saw a tall, slender man holding the victim who had just been shot. The young man put the victim in the back seat of the car, and they drove away. R. 70, l. 24 – 72, l. 23. Glover said he thought the car was a silver Camry or Altima. R. 72, ll. 16-23.

Glover did not see who had shot the victim, and he acknowledged he was guessing about what weapons may have been involved. This led Glover to speculate there were two different guns being fired at the time. R. 75, l. 9 – 76, l. 10. Glover acknowledged "I didn't see the shooters," and he admitted his testimony was based on "what I heard." R. 76, ll. 8-12.

Greenville county forensics officer Brittany Brown processed the silver Nissan Altima after it was towed to the vehicle bay. R. 79, l. 20 – 81, l. 4. The vehicle had a bullet hole through a headlight. R. 84, ll. 4-19. There was another bullet hole in the bumper. R. 87, ll. 10-11. A revolver was found underneath the trunk liner. R. 88, ll. 11-16. Investigator Garrett would speculate that this revolver was placed in the trunk after the shooting and before reaching the hospital by Jaquan McGee. R. 301, l. 20 - 302, l. 13.

Greenville city police officer Andrew Hansen testified the Altima carrying the victim to the hospital became disabled near St. Paul's Methodist Church in downtown Greenville. R. 113, l. 16 – 114, l. 24. Apparently, the coolant all leaked out from one of the bullet holes and the Altima overheated. "Multiple vehicles" stopped to help when they realized the wounded victim was in the car when Jaquan McGee and Zamaria Franklin "flagged them down." R. 114, l. 22 – 115, l. 20. One of the good Samaritans helped place the victim in the back of his pickup truck and they took him to the hospital with a police officer riding with the victim in the back of the truck. R. 115, l. 17 – 118, l. 1.

Eva Gipson was the mother of the twenty-one-year-old victim. Her daughter, "Jay," was dating appellant at the time the victim was shot. R. 80, l. 6 – 121, l. 8. Gipson said she "never really met him [appellant] I just seen him outside all the time in the breezeway." R. 120, l. 24 – 121, l. 1. Gipson could not recall how long Jay dated appellant. She guessed that it seemed like a year or two. R. 121, ll. 7-14.

Gipson testified that Jay had "always been my problem child. So it was always she was jealous of the younger siblings, and I never understood why." R. 121, ll. 18-22. Gipson offered that her family had moved from Miami to Greenville in 2015. R. 121, l. 23 – 122, l. 15.

Jay later moved from Miami into Gipson's apartment Highland Square around 2018. Gipson related that Jay was "very disrespectful, and we was always getting into it." Gipson told Jay she had to leave so Jay went and lived with Gipson's niece in building I of the Highland Square Apartments. R. 122, l. 22 – 123, l. 9. Gipson said she essentially cut off communication with Jay after she kicked her out of her apartment. R. 123, ll. 15-20.

Gipson testified that during Covid, Jay accused her brother, the twenty-one-year-old victim of illegally cashing her Covid stimulus check. Gipson knew this was not true.

Nonetheless, Gipson said that Jay would go on "a rampage," and would come to her apartment "unannounced, banging on my door, coming with the defendant." R. 125, ll. 9-25.

Jay later told Gipson that: "I got my check. It—I'm sorry. It's over with. I'm moving on. It's cool you know, she was just rambling through the text. But I never responded back." R. 127, l. 23 – 128, l. 5.

Gipson testified at one point in 2020 that she worked with her husband, Jay, and appellant at PLD, which was a pharmaceutical development company. R. 129, l. 19 – 130, l. 2. Gipson maintained that appellant would make "little smart remarks to me" and that he had called her a "little punk-ass bitch."[4] R. 130, ll. 3-22. Gipson said this happened after the Covid check problem had already been resolved. R. 131, ll. 2-3.

Gipson said on the day of the shooting when she was leaving to go to the store "we passed each other. And he [appellant] just had this smirk on his face and was looking at me like I was crazy." R. 133, ll. 9-14.

Gipson related that while she was shopping, she received a message: "[Y]our son was involved in a shooting. Your son got shot." R. 134, l. 18 – 135, l. 11. Gipson "went straight to the hospital." R. 135, ll. 17-19. Gipson identified a photograph of appellant, apparently State's Exhibit 122 and State's Exhibit 123, showing "him standing in a breezeway, looks like something he's holding in his hand." Gipson said she could not identify the man standing next to appellant who was "a tall, slender guy, looks like he's got dreads in his head." R. 138, l. 7 – 140, l. 20.

Jermika Taylor was the victim's "little brother." Taylor testified he had lived in Miami with the victim and his sister, Jay. R. 140, ll. 3-25. Taylor said that his brother, the victim was

---

4 This was strange since Gipson, as seen, earlier testified she "never really met him [appellant] I just seen him outside all the time in the breezeway." R. 120, l . 24 – 121, l. 1.

living in Grove Station at the time of the shooting, but he had previously lived in the H building at Highland Square Apartments with their parents. R. 151, l. 24 – 153, l. 7.

Taylor knew appellant because "his sister lived underneath my mom, so [I knew him] just in passing. I know that him and my brother used to talk and eventually my sister started dating him." R. 153, l. 8 – 154, l. 22. Taylor claimed that appellant had threatened his family and maintained appellant had threatened to shoot his mother and his niece. Taylor said his sister, Jay, was with appellant at the time that this threat against his mother and niece was made. R. 155, ll. 2-18.

Felicia Mayes was the only eyewitness to the shooting. She lived in the F building at Highland Square Apartments which was across from the H building. R. 224, l. 24 – 225, l. 25. Mayes testified that on September 26, 2020, she was sitting at her kitchen table looking towards the H building. "And sir, I seen when a guy was just standing there and pointing a gun, which I didn't know what it was at first. And so I was going to my patio door. And my husband told me to get back because there was shooting. So I seen the guy shooting." R. 226, ll. 1-16.

Mayes offered that the shooter was a "black guy in a red t-shirt." Mayes said that she had seen the man in the red shirt before but did not know who he was, and she had never talked to him. R. 226, l. 24 – 227, l. 25. Mayes testified that she had seen the man in the red shirt around, and "I knew he stayed in the H building with his sister." R. 226, ll. 20-22. On cross-examination, Mayes said that she was never shown a photographic lineup by the investigators to attempt to identify the shooter. R. 229, ll. 3-20.

Susan Molloy was qualified as an expert in the field of identifying firearms and comparison of shell casings. R. 231, l. 6 – 233, l. 17. Molloy testified on direct examination that at least two guns were fired at Highland Square Apartments that September day, given the shell

casings. R. 249, ll. 18-25. On cross-examination, Molloy said that three guns were involved. R. 262, l. 24 – 263, l. 22. On redirect examination, Molloy again modified her testimony and said that there may have been four different guns or "technically five guns" involved. "Confusing," Molloy offered. R. 264, l. 18 – 265, l. 7.

Greenville county sheriff's investigator Jonathan Garrett sat through all the testimony in this case as the state's lead investigator. He was then called as a final state's witness. As argued infra, Garrett's testimony was essentially "a closing argument by a police investigator" since he rehashed the testimony of the witnesses he had heard before him, he offered his "inferences" or speculation from that testimony, and hearsay testimony as well.

Garrett testified he asked the mother, Ms. Gipson if anyone had a problem with the victim. "I learned that their daughter's boyfriend had been in an altercation and had arguments with him. That's the only person they could think of at the time. They only knew him as 'AD' and knew he was from Allendale." R. 270, ll. 10-23. Garrett offered that during the course of police investigation, there was no other suspect that emerged other than appellant. There was no alternative theory to appellant not being the correct suspect. R. 270, l. 24 – 271, l. 2.

Garrett referenced a 9-1-1 call where the caller said he witnessed "two individuals running from Highland Square Apartments. There's a hole in the fence, I'm familiar with Highland Square Apartments, [this] leads back to behind the complex. One was wearing a red shirt, one was wearing a black hoodie and he gave a license plate number. And they got in a black or dark Dodge Charger that appeared to be waiting for them." R. 275, ll. 3-12. The 9-1-1 caller described the suspects as "two black males. I think he said they were in their teens, or early twenties. I can't recall, but younger." R. 275, ll. 13-15. The 9-1-1 caller gave the license

plate as being "MWW458." R. 276, ll. 6-11. Garrett offered that this automobile was registered to Yolanda Sondra [Sanders]" who was appellant's sister. R. 276, ll. 6-24.

The 9-1-1 caller actually said that "two black boys" that got into the Dodge Charger leaving Highland Square Apartments after he about heard "ten gunshots." They appeared to be "sixteen, seventeen, eighteen years old." One of them was wearing a red shirt.[5] The caller *did not mention* a black shirt or black hoodie, and he gave no other description of the two young man. The 9-1-1 operator did not encourage the caller to cooperate with the police about what he saw, and the caller said at the end of the call that he wanted to "remain anonymous." State's Exhibit 2, the 9-1-1 call, was played at the beginning of the trial, when Sara Young, the Greenville County Sheriff's Department's 9-1-1 tape research analyst testified. R. 25, l. 10 – 29, l. 15. Again, it is difficult to understand how Investigator's Garrett summary, and inaccurate summary pertaining to the second young man "wearing a black shirt or black hoodie" of the 9-1-1 call was necessary.[6] State's Exhibit 2 is on file with this Court.

Garrett further testified that he learned there were bitter feelings between appellant's girlfriend, Jay, and her mother over a Covid check. However, the allegations that the Covid check was misappropriated were unfounded. There was no basis for this allegation. R. 280, l. 22 – 281, l. 10.

While being shown the surveillance tape along with the jury, Garrett maintained: "I see the breezeway of building H and a suspect holding up something. It appears to be a firearm in a

---

5 At sentencing, defense counsel Kata told the judge appellant was "a young man in his early 20s." R. 393, ll. 20-23. The man in the red shirt in the photographs before this Court also did not look to sixteen-to-eighteen-years-old.

6 The jury returned during deliberations and requested to hear Garrett's testimony again. Thus, the jury heard Garrett's summary and his inferences and speculation from the state's evidence twice, and the solicitor's summary and inferences from the state's evidence in his closing argument as well. R. 390, ll. 1-10.

red shirt, and the subject that's with him in the black top also pointing an object, appears to be a firearm, down the parking lot where the victim was ultimately shot." R. 286, ll. 18-23.

Garrett offered that the film footage provided the necessary probable cause for an arrest warrant for appellant. Appellant was arrested about six days later in Suffolk County, New York. Jay and Jermaine, the victim's brother, were with appellant in New York. R. 300, ll. 12-24.

Garrett said he learned during his investigation that the victim lived in Piedmont with his girlfriend, but he came to the Highland Square Apartments at times to visit his family. R. 292, ll. 17-22. Garrett said that appellant's girlfriend, and the victim's sister, Jay was not cooperative. He opined, despite evidence as many as five guns were involved and ten gunshots were heard, that there was no other forensic or cell phone evidence that would implicate anyone besides appellant in this crime. R. 301, ll. 13-19. Garrett also offered that the police never developed a lead on who the man in the black shirt standing next to the man in the red shirt was in this case. Garrett admitted the video footage in this case was not of good quality. R. 308, l. 17 – 309, l. 23.

On cross-examination, Garrett acknowledged that no one on the scene identified appellant from a photo lineup, and the only people to pick appellant out of a lineup were not present at the time of the shooting. R. 318, ll. 5-24. As seen above, Garrett offered his hearsay

testimony that could have been interpreted as stating Jaquan McGee had allegedly told someone that appellant as "shooting back."[7] R. 318, l. 5 – 319, l. 13.

Directed verdict motion

At the close of the state's case after Garrett's testimony, defense counsel moved for a directed verdict. He argued that there no was no direct or sufficient circumstantial evidence that identified appellant as being the shooter. R. 321, ll. 21-25. The judge agreed that this was a highly circumstantial evidence case. R. 322, ll. 1-2.

Assistant solicitor Holloway then argued the circumstantial evidence showed appellant was connected to the sister of the victim. He was dating her. The assistant solicitor said appellant was the man in the red shirt which matched the description of one of the shooters and this was "a circumstantial tie of the defendant as the shooter and meets the elements of the crime itself." R. 322, ll. 3-23. The judge ruled there was enough circumstantial evidence to submit the case to the jury, and he denied the motion for a directed verdict. R. 322, l. 24 – 323, l. 5.

Discussion

The state's case was that appellant was the man in the red shirt on the surveillance tape and in still shots. The tape and still shots are not of good quality, and they were certainly not straightforward evidence, much less eyewitness evidence, that appellant was a shooter or aiding and abetting the man dressed in the black shirt. In addition, the evidence was that appellant's

---

[7] During his closing argument, the solicitor said of McGee not testifying: "It would be nice to have Mr. Franklin here and Mr. McGee. We've already discussed their lack of cooperation." R. 340, ll. 22-24. The solicitor said although "Jaquan McGee, he wasn't here, but we had testimony of his behavior, how he was acting. He and Franklin behaved like somebody trying to help their friend." R. 343, ll. 21-23. The solicitor also urged the jury that if appellant was not the shooter, he was still guilty under the legal concept of accomplice liability: "Hand of one is the hand of all." R. 348, l. 20 – 349, l. 8. Defense counsel Kata countered to the jury that Investigator Garrett was merely speculating about the evidence and that the victim's mother had her mind made up that appellant was the shooter even though she did not see what happened and was not present at the time of the shooting. R. 354, l. 19 – 355, l. 3.

girlfriend Jay was estranged from her mother who was also the mother of her brother, the victim. There was evidence appellant had made "smart" remarks to Jay's mother in the past. While the mother, Eva Gipson, did not testify about any problem between the victim and appellant, Investigator Garrett said "he learned" from somebody that they had been in "an altercation" in the past between appellant and the victim. A man in a red shirt was seen leaving the Highland Apartments in a Dodge Charger after the 9-1-1 caller heard about ten gunshots. As seen, as many as four or five guns many have been involved in this shooting, and witnesses did not cooperate or testify. While the judge does not weigh the evidence at the directed verdict stage, speculation in this case was widespread as seen above. State v. Hepburn, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013); State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000).

The evidence in this case was suspicion evidence, and even if it was strong suspicion evidence, it still was not substantial circumstantial evidence appellant shot and killed the victim or that appellant was aiding and abetting the unknown man in the black clothes.

The suspicion evidence in this case was less than that in State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000); State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011); State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011); State v. Schrock, 288 S.C. 129, 322 S.E.2d 450 (1984); and State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2011) where our Supreme Court held a directed verdict was erroneously denied to the defense in each case. Those cases are addressed below.

First, though, as to accomplice liability, in State v. Mattison, 388 S.C. 469, 479-80, 697 S.E.2d 578, 584 (2010), our Supreme Court wrote:

> "Under accomplice liability theory, 'a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act.'" State v. Langley, 334 S.C. 643, 648-49, 515 S.E.2d 98, 101 (1999) (quoting Austin, 299 S.C. at 459, 385 S.E.2d at 832).

> "In order to be guilty as an aider or abettor, the participant must be chargeable with knowledge of the principal's criminal conduct." State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 272 (1987); *see* Wilson v. Wilson, 319 S.C. 370, 373, 461 S.E.2d 816, 817 (1995) ("Prior knowledge that a crime is going to be committed, without more, is not sufficient to make a person guilty of the crime.").
>
> "Mere presence at the scene is not sufficient to establish guilt as an aider or abettor." Leonard, 292 S.C. at 137, 355 S.E.2d at 272; State v. Barroso, 328 S.C. 268, 272, 493 S.E.2d 854, 856 (1997) (stating that mere association with admitted members of a conspiracy is insufficient to tie other persons to the conspiracy). However, "presence at the scene of a crime by pre-arrangement to aid, encourage, or abet in the perpetration of the crime constitutes guilt as a principal." State v. Hill, 268 S.C. 390, 395-96, 234 S.E.2d 219, 221 (1977)."

The state's case was that if appellant was not the shooter who killed the victim in this case, he was guilty of aiding and abetting the unknown black man dressed in black who was on the still shot standing next to him where appellant had been identified as the man wearing the red shirt. Any conclusion that appellant, the man in red, was aiding and abetting the man in black was speculation. Thus, the real question was whether the state presented substantial circumstantial evidence appellant shot and killed the decedent to withstand the directed verdict motion. Appellant submits it did not.

The court should not refuse to grant the motion for a directed verdict where the evidence, as here, merely raises a suspicion that the accused is guilty. See State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000). In Mitchell, a burglary case, the victim testified that Mitchell had been over to his house a few times. Mitchell had also attended a social gathering at the victim's home for about forty-five minutes to one hour. A police officer investigating the burglary found glass on the floor, and there was a screen from which the officer was able to get an identifiable fingerprint. That unique fingerprint matched Mitchell. The Supreme Court held that the state

had failed to produce substantial circumstantial evidence reasonably tending to prove the guilt of Mitchell, and that a directed verdict should have been issued under these circumstances.

In State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000) our Supreme Court also held the defendant was entitled to a directed verdict in that murder case. There was evidence a vehicle was seen on the night of the murder in the victim's apartment complex that was very similar to the car in which Martin and his co-defendant were traveling that night.

In addition, when Martin and his co-defendant were late picking up Martin's girlfriend at the bar where she worked on the night of the murder, Martin her "Some shit happened," and the co-defendant added, "somebody may have died tonight." State v. Martin, 340 S.C. at 600, 533 S.E.2d at 601.

Evidence tied to the murder scene in Martin was also found in trash cans outside the bar where Martin's girlfriend worked. This Court held that all of this evidence, while certainly raising a strong suspicion of Martin's guilt, was insufficient to withstand a directed verdict motion.

In State v. Schrock, 288 S.C. 129, 322 S.E.2d 450 (1984), our Supreme Court held that evidence the defendant was in the area of the murder scene, and that footprints at the scene were like his footprints was insufficient to take the case to the jury. In State v. Schrock, there was also evidence that Marlboro cigarette butts were found at the murder scene, and Schrock admitted to the police that he smoked Marlboro cigarettes. Tests performed on an oil can did not supply a conclusive connection between the crime scene and the defendant. The Supreme Court held Schrock was entitled to a directed verdict given the evidence.

In State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011), our Supreme Court also held the state presented insufficient evidence for the murder charge to be submitted to the jury and

that trial judge erred by refusing to direct a verdict. In Bostick the victim was an older woman who lived next door to Bostick. She was a treasurer and secretary at her church, and she was known to bring home a brief case containing money from the church on Sunday for deposit at the bank on Monday. The victim died in a mysterious arson. Bostick had blood on his jeans following the murder and arson. While a DNA sample was inconclusive -- a chemical analysis of Bostick's shoes revealed he had gasoline on his shoes. In the burn pile in Bostick's yard many items belonging to the decedent were found. These included two sets of her car keys, toe nail clippers, pens, burned papers, metal clap of a purse, and a watch. A heavy petroleum product such as kerosene or diesel fuel, was used as an accelerant in the burn pile fire. However, Bostick's mother testified that he did not use kerosene or diesel fuel in her burn pile.

Despite this very strong circumstantial evidence of guilt, our Supreme Court agreed with Bostick that this evidence did not rise to the level of being the substantial circumstantial evidence necessary to submit the case to the jury.

In State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011) our Supreme Court again held that the defendant was entitled to a directed verdict on the charges of first-degree burglary, grand larceny, criminal conspiracy, and malicious injury to property. The Court noted that even though Odems was in the vehicle with the other undisputedly guilty burglars -- with the proceeds of the burglary shortly after the burglary and Odems fled from the scene of the traffic stop and asked a witness to lie for him -- that was still insufficient circumstantial evidence that he was involved in the burglary. Our Supreme Court in State v. Odems relied on its prior opinions in State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011) and State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2011) to hold that a directed verdict should have been issued.

In State v. Odems, 395 S.C. 582, 587-88, 720 S.E.2d 48, 50-51 (2011), the Supreme Court observed regarding the arson case of State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2011):

> "The State relied on four pieces of circumstantial evidence to convict Lollis: (1) the marital relationship between Burgess and Lollis; (2) Lollis's alleged financial trouble; (3) the fact that Lollis placed his personal valuables from the home in a storage room one day prior to the fire; and (4) Lollis's possession of the storage room key on the day of the fire. *Id.* at 584, 541 S.E.2d at 256. However, alternate evidence showed that Lollis was current on his mortgage at the time of the fire. Lollis, 343 S.C. at 585, 541 S.E.2d at 257. Moreover, Lollis testified he had no reason to burn down his home because of extensive remodeling being done at the time of the fire, and that he moved his belongings into storage in order to protect them from damage due to that remodeling work." Id. at 582–83, 541 S.E.2d at 255.

The Supreme Court held that the state's evidence did not "reasonably tend" to prove Lollis's guilt. "First, Burgess admitted to starting the fire without assistance from Lollis, without his knowledge, and the State presented no evidence of an agreement between them. Second, the State presented no evidence of Lollis' financial trouble.... Furthermore, Lollis did not have insurance on his personal property lost in the fire. Finally, Lollis presented a plausible explanation for placing valuables in the storage room on the day of the fire - he was trying to protect them from drywall dust as he remodeled his home. Id. at 585, 541 S.E.2d at 257 (holding that a mere arousal of suspicion is an improper basis to deny a motion for directed verdict)."

The State's case against Odems relied primarily on three pieces of circumstantial evidence: (1) the fact that less than ninety minutes after the burglary, police located Odems in the getaway car with the burglars and the stolen goods; (2) Odems fled from law enforcement; and (3) Odems asked an uninvolved person to lie for him. State v. Odems, 385 S.C. 399, 404–05, 684 S.E.2d 573, 575 (Ct. App. 2009). It is important to note that the Supreme Court looked to other evidence in these directed verdict cases, and not strictly that evidence the state offered as

tending to prove the defendant's guilt of the crime charged. Appellant has attempted to present this Court with a full and fair rendition of the evidence in this case.

The circumstantial evidence presented in this case is less than the suspicion of guilt evidence in Odems, Bostick and Lollis. No eyewitness testified that appellant was shooting, and Investigator Garrett's half sentence hearsay assertion the McGee allegedly said appellant was "shooting back" -- if that was what McGee meant -- *was not competent evidence* to consider when determining whether appellant was or is entitled to a directed verdict. In State v. Ashworth, 248 N.C. App. 649, 651, 790 S.E.2d 173, 176 (2016) (quoting State v. Chukwu, 230 N.C. App. 553, 561, 749 S.E.2d 910, 916 (2013) the Court wrote that "Competent evidence is evidence that a reasonable mind might accept as adequate to support the finding." A reasonable mind would not accept the hearsay uncorroborated assertion of a single witness, McGee, who refused to cooperate, testify, and be cross-examined as evidence appellant was "shooting back" – if that is what McGee allegedly said, and whatever it in context in meant. Again, there were potentially four or five guns involved and as many as ten gunshots from different directions. There was no straightforward evidence of appellant having shot the decedent or him being responsible for his death under the legal theory of accomplice liability.

In this case there was a failure of *competent evidence* tending to prove appellant's guilt of the murder charge, and the trial judge therefore should not have refused the defense motion for a directed verdict of acquittal. See State v. Venters, 300 S.C. 260. 264, 387 S.E.2d 270. 272 (1990); State v. Jenkins, 278 S.C. 219, 294 S.E.2d 44 (1982). (emphasis added). This hearsay testimony of "shooting back" was also without context, there was no evidence the victim shot first -- the film footage admitted does not support such an assertion -- and this was why cross-

examination of the alleged declarant, McGee, was crucial before this "evidence" could be considered competent at the directed verdict stage or respectfully by this Court.[8]

In the final analysis, there was evidence appellant lived at the Highland Square Apartments or he was there a lot at a minimum so his mere presence there on the day of the shooting showed precious little. R. 228, ll. 21-22. The blurry film footage and still shots from that blurry footage created a suspicion of appellant's guilt where the state speculated that Jay's estrangement from her mother provided a motive for appellant to kill her brother, the victim. There were possibly five different guns involved and the 9-1-1 caller thought ten shots were fired when the victim was shot. Suspicion appellant shot and killed the decedent did not constitute substantial circumstantial evidence he did so, and appellant was therefore entitled to a directed verdict. The same is true of the speculative evidence that appellant aided and abetted the unknown man in black in a concerted effort to murder the victim in this case.

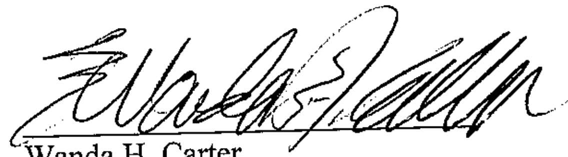
This Court should respectfully issue a directed verdict of acquittal.

---

[8] It is unclear what the trial judge considered at the directed verdict stage since the trial judge only noted this was a "highly circumstantial evidence case. R. 322, ll. 1-2.

CONCLUSION

By reason of the foregoing arguments, a directed verdict of acquittal should be issued.



Wanda H. Carter
Chief Appellate Defender

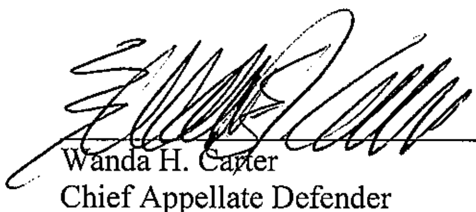
ATTORNEY FOR APPELLANT

This 12th day of January, 2026.

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."

January 12, 2026.



RECEIVED
Jan 12 2026
SC Court of Appeals

Wanda H. Carter
Chief Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589