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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

William P. Keesley, Circuit Court Judge

Appellate Case No. 2025-000305

THE STATE,

Respondent,

v.

IVY TYRONE RICHARDSON, JR.,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

Appellant's Issue Statements

1. Did the trial court err in failing to dismiss indictment number 2023-GS-32-04011 on the grounds that it was defective and highly prejudicial to Appellant?
2. Did the trial court err in refusing to direct a verdict in favor of Appellant?

Respondent's Counterstatements

1. Whether the trial court abused its discretion by denying Appellant's motion to dismiss an indictment containing an unimportant scrivener's error that did not prejudice Appellant, given that the jury found Appellant not guilty of the crime charged in the indictment.
2. Whether the trial court erred by declining to direct a verdict where, in the light most favorable to the State, evidence existed that reasonably tended to prove Appellant's guilt.

STATEMENT OF THE CASE

In October 2023, a Lexington County grand jury indicted Appellant for two counts of attempted murder, one count of discharging a firearm into an occupied vehicle, and one count of ill treatment toward an animal. (Indictment Nos. 2023-GS-32-03999, -04009, -04010, & -04011). On February 10-13, 2025, Appellant proceeded to a jury trial before the Honorable William P. Keesley. (Tr. 1).

Before the jury was selected but after the trial court read the indictments to the jury pool, the State informed the trial court that Appellant's indictment for ill treatment toward an animal contained a scrivener's error concerning the date of the alleged crime. (Tr. 29). The indictment indicated that the alleged crime occurred "on or about August 31, 2023." (Indictment No. 2023-GS-32-04011). The State indicated that the date should have been August 22, 2023. (Tr. 29). Citing to *State v. Richey*,¹ *State v. May*,² and *Carrier v. State*,³ the trial court noted that an incorrect date in an indictment can be modified if the incorrect date was due to a scrivener's error. (Tr. 29). The trial court accepted the State's position that the date in the ill treatment toward an animal indictment was merely a mistake in listing the correct date and allowed the indictment to be amended to reflect the August 22, 2023 date. (Tr. 29-30; Indictment No. 2023-GS-32-04011).

During trial, Melissa Drafts, a compliance officer with Lexington County Communications, testified that she oversaw compliance for 911 call records. (Tr. 133-34). She identified a 911 call received on August 22, 2023 at 6:09 pm. (Tr. 135-36). According to Drafts, the caller identified himself as Jacob Lane, who was calling about a gunshot wound. (Tr. 136).

¹ 88 S.C. 239, 70 S.E. 729 (1911).

² 45 S.C. 509, 23 S.E. 513 (1896).

³ 441 S.C. 547, 895 S.E.2d 679 (Ct. App. 2023).

Drafts stated Lane provided his location as 105 Lorick Village Road in Lexington County. (Tr. 136). State's Exhibit 1, which is the recording of the 911 call, was played for the jury. (Tr. 138).

Tyler Douglas, a deputy with Lexington County Sheriff's Department, testified that he responded to the 911 call. (Tr. 149-51). When he arrived on scene, he observed a man, later identified as Lane, with multiple gunshot wounds sitting off to the side of a house. (Tr. 153). Douglas observed a truck as he approached Lane. (Tr. 159). Douglas applied a tourniquet to Lane's left arm and evaluated Lane's other injuries. (Tr. 154). While Douglas was providing aid to Lane, he heard a disturbance in the tree line near the house. (Tr. 154). He described this disturbance as yelling between a man and a woman. (Tr. 154). As Douglas and other officers walked toward the tree line, Douglas saw Appellant and Sophia Jackson in the tree line. (Tr. 156). Appellant was detained and taken to a patrol vehicle. (Tr. 156). Douglas identified his body camera video, which was played for the jury. (Tr. 157; State's Ex. 3).

After detaining Appellant, Douglas waited with Appellant until his superior placed Appellant in custody. (Tr. 161). Douglas then put up crime scene tape, started a crime scene log, maintained scene security, and assisted in securing the house when the major crimes unit arrived with a search warrant. (Tr. 161). When Douglas assisted in securing the house, he located a dog that appeared to have a gunshot wound to the bridge of its nose in one of the bedrooms in the house. (Tr. 161-63). Douglas noted the dog was calm and panting on the floor despite the gunshot wound on its face. (Tr. 163). According to Douglas, Lexington County Animal Control retrieved the dog and provided care. (Tr. 164). Douglas stated that when he looked through the truck that he saw upon arriving at the scene, he did not find any guns in it but noted his search was not thorough. (Tr. 170).

Willie Harris, a sergeant with Lexington County Sheriff's Department, testified that upon arriving at the scene, he observed a man, later identified as Jacob Lane, sitting on the ground. (Tr. 189). Harris testified that Lane had suffered multiple gunshot wounds. (Tr. 190). According to Harris, Appellant was identified as the suspect. (Tr. 190). While Harris was making contact with Lane, he heard yelling coming from the tree line near the house and proceeded to enter the tree line toward the yelling. (Tr. 191). Harris testified he only heard a male voice and proceeded toward it, eventually making contact with Appellant. (Tr. 191-92). He stated that Appellant complied with his demands and was detained. (Tr. 193). Harris's body worn camera footage was introduced as State's Exhibit 8. (Tr. 194).

Harris testified that Appellant directed him to a firearm that was propped up against a tree. (Tr. 196). According to Harris, the gun's safety was disengaged, meaning that the weapon was in a firing position. (Tr. 197). Harris stated that the gun was an AR-15 assault rifle that belonged to Appellant. (Tr. 197). After securing the weapon, Harris spoke to Appellant in the back of Douglas's patrol car. (Tr. 198). Harris described Appellant as "upset and angry." (Tr. 198). According to Harris, Sophia Jackson and Michael Combs were both identified as victims and treated by EMS. (Tr. 198). Harris confirmed that EMS transported Jackson to the hospital. (Tr. 207).

Harris testified that a shotgun was found under a seat in the backseat of a truck located on the property. (Tr. 215). This shotgun was only discovered after a more thorough search of the truck pursuant to a search warrant. (Tr. 215). Harris stated that there was no indication the shotgun had been fired. (Tr. 226).

Jacob Lane testified that he met Jackson through work. (Tr. 232). He stated that before the incident, he began picking Jackson up and taking her to her job. (Tr. 235). Lane stated that

prior to the day of the incident, he did not have any interaction with anyone from Jackson's neighborhood. (Tr. 238). However, Lane testified that on a day before the incident, Jackson pointed out Appellant as Appellant was walking down the street. (Tr. 238). Lane recalled that Appellant was agitated, disheveled, and appeared threatening. (Tr. 238). According to Lane, Appellant told Jackson that Appellant ought to get his shotgun and blow their heads off. (Tr. 238). This interaction occurred while Lane was raking leaves for Jackson in her yard. (Tr. 239).

On the day of the incident, Lane picked up Jackson and her dog from her job around 5 pm. (Tr. 237, 240). Lane stated that when they reached Jackson's residence and were pulling off the road onto the driveway, "weird shots rang out." (Tr. 240-41). He heard many shots but did not count them. (Tr. 243). Lane confirmed he had been shot at least three times. (Tr. 241, 243). Lane stated that he heard Jackson say to get down. (Tr. 241). According to Lane, Jackson and Michael Combs, who was in the backseat of Lane's truck with Jackson's dog, got down. (Tr. 241). Lane confirmed Jackson grabbed his phone to call 911 but Appellant emerged from around the side of the truck pointing his rifle through the window. (Tr. 241). Lane testified that Jackson got out of the truck and went off with Appellant, headed toward the house. (Tr. 242). Lane stated that as Jackson and Appellant walked off, the pain from his gunshot wounds hit and he called 911. (Tr. 242-43). He confirmed he underwent multiple surgeries to repair his gunshot wounds. (Tr. 244).

Lane testified that he never took anything out of Jackson's residence. (Tr. 251). He stated that he and Combs did clear some "scrap, junk, trash, yard debris" out of the yard. (Tr. 251-52). Lane helped Jackson remove some falling-apart pressboard dressers from the back porch of the house. (Tr. 262). Lane also confirmed he kept a 12-gauge shotgun in his truck but had never pointed it at anyone. (Tr. 252-53). He stated his shotgun was not used at any point during the

incident. (Tr. 261). Lane believed Jackson's dog jumped out of his truck after being shot, but Lane did not see the dog get shot. (Tr. 258).

Michael Combs testified that at the time of the incident, he worked with Lane's brother. (Tr. 266). He met Jackson when Lane brought her to his work approximately three to five days before the incident. (Tr. 266). His only interactions with Jackson outside of at his workplace were at Jackson's residence. (Tr. 266). Combs stated that he, Lane, and Richard Sturkie were helping Jackson clean up her yard. (Tr. 267). Combs did not know Appellant. (Tr. 267). Combs testified that he did not take anything out of the house as he was there to do yardwork. (Tr. 268). He only ever took "trash" off the property. (Tr. 267).

Combs stated that on the day of the incident, he rode with Lane to drop Jackson off at her house. (Tr. 268). He was in the backseat with Jackson's dog. (Tr. 268-69). Within a few seconds of arriving at Jackson's house, approximately fifteen to twenty rounds hit the truck and broke the windows. (Tr. 269). Combs testified that Jackson's dog latched onto his hand, after which he noticed that the dog had been shot. (Tr. 269). Combs stated that the gunfire was close to the truck and had come out of the tree line on the driver's side of the truck. (Tr. 270). After the shooting stopped, Jackson got out of the truck and Appellant approached her. (Tr. 271). According to Combs, Appellant, with his rifle, took Jackson off into the woods. (Tr. 271). He did not see anyone besides himself, Lane, Jackson, and Appellant during the incident. (Tr. 272). After Appellant and Jackson left the area, Combs and Lane got out of the truck but stayed in the front yard area near the truck. (Tr. 272). Combs stated that both he and Lane received on-site medical treatment for their wounds. (Tr. 273). State's Exhibits 16 and 17 show Combs's hand with the dog bite mark and his back covered in glass. (Tr. 273). Combs stated that he did not know there was a shotgun under his seat when the incident occurred. (Tr. 280).

Brenda Snelgrove, a sergeant over the crime scene unit with Lexington County Sheriff's Department and an expert in crime scene investigation, testified that she photographed the scene. (Tr. 297-302). State's Exhibits 19 to 75 are some of her photographs. (Tr. 302). Snelgrove stated that when she arrived, she noted several projectile defects on a truck that was unoccupied but still running. (Tr. 303). She quickly glanced through the truck to make sure nothing needed to be removed before it was towed. (Tr. 304). Snelgrove noted "a lot" of a red substance, which appeared to be blood, inside the truck. (Tr. 304). She stated that shattered glass from the truck's windows was found inside and around the outside of the truck. (Tr. 305). She noted that she found 223 caliber cartridge casings at the scene, which are consistent with ammunition used in rifles. (Tr. 307). These shell casings are shown in State's Exhibits 77 to 110 and 115 to 129. (Tr. 313-14, 317-18). Snelgrove also collected some unfired 223 rounds from the scene. (Tr. 236).

Snelgrove confirmed she found a shotgun under the backseat of the truck that was not visible from her initial cursory look through the truck. (Tr. 320). She noted that it was not loaded. (Tr. 320). Unfired shotgun shells were found near the shotgun. (Tr. 320). Snelgrove confirmed that no fired shotgun shells were found inside or outside of the truck. (Tr. 320-21). From the evidence collected at the scene, Snelgrove determined that the shooter was mostly stationary when they shot at the truck, which was travelling past them. (Tr. 323).

Snelgrove collected part of a bullet projectile from a tree at the scene. (Tr. 308). However, she did not remember if that fragment was large enough to determine if it was fired from the weapon Appellant directed law enforcement to when Appellant was apprehended. (Tr. 330).

Michael Fitzgerald, a medical doctor and expert in trauma surgery and diagnosis, testified that he treated Lane. (Tr. 364-66). He stated that Lane arrived as a level 1 trauma case, or a most severe condition patient. (Tr. 366). Fitzgerald testified that Lane was tachycardic upon arrival,

meaning he had a high heart rate and low blood pressure. (Tr. 366). According to Fitzgerald, Lane's condition upon arrival at the hospital made him concerned about hemorrhagic shock, which is bleeding to death. (Tr. 366). Further, upon arrival, Lane presented with lung tissue and the lining of an intraabdominal organ hanging out of his body. (Tr. 367). According to Fitzgerald, he noticed shrapnel in Lane's abdomen after taking a chest x-ray. (Tr. 368). He confirmed Lane suffered blast injuries. (Tr. 268). Fitzgerald listed Lane's injuries as a large soft tissue defect to his left arm, a left chest wound, a left flank wound, and projectile wounds to his right back. (Tr. 369). He stated that in the operating room, he further identified damage to Lane's diaphragm and spleen, the latter of which had to be removed. (Tr. 369). Fitzgerald testified that Lane suffered at least three gunshot wounds and would have died had he not received medical intervention. (Tr. 371).

Tika Ponds testified that she was employed at Divine Providence, which monitors personal electronic devices. (Tr. 372). She confirmed her company monitored Appellant's personal electronic device, including on the day of the incident. (Tr. 373). She also confirmed that Appellant's personal electronic device had an active location history on the date of the incident between 5:45 and 6:21 pm. (Tr. 373-74). She noted that the address listed for each specific time was approximate but stated that the locations also had coordinates which provided for a more specific location. (Tr. 378). According to Ponds, Appellant's location was listed at Jackson's residence—the 105 Lorick Village Road address—for the first time at 6:11 pm. (Tr. 377).

Brandon Marthers, a criminal intelligence sergeant with Lexington County Sheriff's Department and an expert in call detail record analysis and mapping, testified that he mapped Appellant's location between 5:45 and 6:21 pm on the day of the incident. (Tr. 379-82). He stated

Appellant's movements tracked a road until they settled into a group around the incident scene. (Tr. 385). State's Exhibit 132 is the map that Marthers compiled. (Tr. 382-83).

Jennifer Bonnema, a staff veterinarian with Lexington County Animal Services and an expert in veterinary medicine, testified that she treated Jackson's dog. (Tr. 398-400). She confirmed the dog had injuries to his face and limbs. (Tr. 401). State's Exhibits 133 to 137 are photographs of the dog's injuries. (Tr. 402). Bonnema stated that the dog's injuries were consistent with gunshot wounds. (Tr. 403). According to Bonnema, the dog had a linear wound on the right side of its muzzle that ended in a puncture wound under its right eye, which resulted in cloudiness in the eye from trauma. (Tr. 403-04). The dog sustained superficial wounds on his left front shoulder due to gunshot wounds. (Tr. 404). The dog also suffered "more substantial wounds" on his back right thigh, which were consistent with gunshot wounds. (Tr. 404-05; State's Ex. 136). Bonnema stated the dog was given pain medication for "severe" pain as well as antibiotics. (Tr. 405). Bonnema stated that the day after the incident, the dog was alert, responsive, and eating but would not attempt to stand. (Tr. 406). The day after that, the dog attempted to stand, but had "significant weakness" in the rear right leg from trauma. (Tr. 406).

Bonnema stated that the dog recovered, despite some mild residual weakness. (Tr. 409). However, the dog was euthanized after six weeks in Lexington County Animal Control's care, mainly due to the dog's demeanor. (Tr. 408-09, 411). Bonnema confirmed that even with the injuries the dog sustained, it would have been able to run after sustaining those injuries and before receiving treatment. (Tr. 413).

After the State rested, Appellant moved for directed verdict on all charges, arguing that the State failed to present sufficient evidence as a matter of law. (Tr. 415-16). Appellant also moved to strike the indictment for ill treatment of an animal on the basis that the date issue in the

indictment could not have been a scrivener's error. (Tr. 416). The trial court determined that the State presented sufficient evidence to submit the charges to the jury and confirmed his earlier ruling regarding the ill treatment of an animal indictment. (Tr. 417). At the close of his case, Appellant renewed his directed verdict motion and his motion to strike the indictment for ill treatment of animals. (Tr. 481-82). The trial court again denied these motions. (Tr. 482).

When discussing jury charges with the trial court, Appellant specifically agreed with the trial court that the jury could find Appellant guilty of the lesser included offense of assault and battery of a high and aggravated nature (ABHAN). (Tr. 484).

The jury found Appellant guilty of discharging a firearm into an occupied vehicle and two counts of the lesser included offense of ABHAN. (Tr. 558). However, the jury found Appellant not guilty of ill treatment toward an animal. (Tr. 558).

The trial court sentenced Appellant to ten years' imprisonment for discharging a firearm into an occupied vehicle and twenty years' imprisonment for each ABHAN conviction. (Tr. 578-79). The trial court noted the sentences were to run concurrently. (Tr. 579).

This appeal followed.

STANDARD OF REVIEW

Sufficiency of Indictment

The trial court's factual conclusions as to the sufficiency of an indictment will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion. *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). An abuse of discretion occurs when the trial court's ruling is based on an error of law or a factual conclusion without evidentiary support. *Id.*, see also *State v. Preslar*, 364 S.C. 466, 472, 613 S.E.2d 381, 384 (Ct. App. 2005). Accordingly, an appellate court is bound by the trial court's factual findings when the findings are supported by the evidence and not controlled by error of law. *Baccus*, 367 S.C. at 48, 625 S.E.2d at 220.

Directed Verdict

"On appeal from the denial of a directed verdict, this [c]ourt views the evidence and all reasonable inferences in the light most favorable to the State." *State v. Pearson*, 415 S.C. 463, 470, 783 S.E.2d 802, 806 (2016) (quoting *State v. Butler*, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014)). "If the [S]tate has presented 'any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused,' this [c]ourt must affirm the [circuit] 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)). "The case should be submitted to the jury if there is any substantial evidence [that] reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly or logically deduced." *State v. Robinson*, 310 S.C. 535, 538, 426 S.E.2d 317, 319 (1992). An appellate court may reverse the circuit court only if "there is no evidence to support" the circuit court's ruling. *State v. Gaster*, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002).

ARGUMENT

- I. The issue of whether the trial court abused its discretion by denying Appellant's motion to dismiss the indictment for ill treatment of an animal is moot because this Court cannot grant effectual relief as the jury found Appellant not guilty of this charge.**

A. Mootness

To the extent that Appellant argues the trial court abused its discretion by denying his motion to dismiss the indictment for ill treatment of an animal, this issue is moot because Appellant was found not guilty of this charge. (Tr. 558). Thus, any judgment rendered by this Court would have no practical legal effect because Appellant was not convicted of the indicted crime. *See Sloan v. Greenville County*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009) ("A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy."); *id.* ("Mootness also arises when some event occurs making it impossible for the reviewing court to grant effectual relief.").

Further, this issue does not fall into any of the exceptions to mootness because (1) this issue, while capable of repetition in other cases, would not generally evade review if a defendant was convicted of the indicted offense; (2) this issue is not a question of "imperative and manifest urgency" requiring this Court to consider the question to establish a rule for future conduct; and (3) the decision by the trial court will not affect future events or have collateral consequences for the parties. *Id.* (providing the following three exceptions to the mootness doctrine: (1) the issue raised is capable of repetition but generally will evade review, (2) if the issue before the appellate court is a question "of imperative and manifest urgency," an appellate court may consider the question in order "to establish a rule for future conduct in matters of important public interest," and (3) if a decision by the trial court may affect future events, or may have collateral consequences

for the parties, the appeal is not moot, despite the appellate court's inability to give effective relief in the present case).

B. Preservation

To the extent that Appellant argues that the trial court's denial of his motion to dismiss the indictment for ill treatment of an animal prejudiced him because the State was able to present testimony from a veterinarian in support of this indictment, this issue is not preserved for appellate review. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon by the trial court will not be considered on appeal."). Here, Appellant never raised any argument regarding the testimony of Bonnema or her qualification as an expert in veterinary medicine. Moreover, Appellant did not make any argument that Bonnema's testimony would prejudice him at any point during trial. Therefore, this issue is not preserved for appellate review.

C. Prejudice

To the extent that this issue is preserved for appellate review, Appellant has failed to show that he was in any way prejudiced by the veterinarian's testimony. Not only did the jury find him not guilty of the indicted offense to which this testimony related, the jury also found him guilty of the *lesser included offense* of ABHAN on both of his attempted murder charges. Therefore, Appellant is now arguing for the first time on appeal that evidence related to the ill treatment of an animal indictment prejudiced him to the point that the jury *only* found him guilty of ABHAN and discharging a weapon into an occupied vehicle *because of this evidence*. However, this unpreserved and moot theory does not consider evidence of Lane's extensive and life-threatening injuries, evidence of Combs injuries, or evidence that Appellant shot into Lane's occupied truck.

It makes no sense. Evidence of Appellant's ill treatment of Jackson's dog clearly did not prejudice Appellant as the jury found him not guilty of ill treatment of an animal and found him guilty of the lesser included offense of ABHAN instead of attempted murder. *See generally State v. Gilchrist*, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998) ("All evidence is meant to be prejudicial; it is only *unfair* prejudice which must be avoided." (quoting *United States v. Rodriguez-Estrada*, 877 F.2d 153, 156 (1st Cir. 1989))).

II. The trial court did not err by denying Appellant's motion for directed verdict because, in the light most favorable to the State, the State presented evidence reasonably tending to prove Appellant's guilt and from which Appellant's guilt can be fairly and logically deduced.

A. Preservation as to the ABHAN Convictions

For an issue to be preserved for appellate review pursuant to our issue preservation rules, the issue must have been (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. *State v. Rogers*, 361 S.C. 178, 183, 603 S.E.2d 910, 912-13 (Ct. App. 2004). Further, an appellant cannot argue one theory in support of an issue during trial and then present a different theory in support of the same issue on appeal. *State v. Thomason*, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) ("[A] party cannot argue one theory at trial and a different theory on appeal.").

In *State v. Adams*, this Court considered a challenge to a trial court's directed verdict ruling that had a different argument on appeal from the one presented to the trial court. 332 S.C. 139, 144, 504 S.E.2d 124, 126 (Ct. App. 1998). At trial, Adams sought a directed verdict only on a theory that the evidence presented by the State did not "rise to the 'level of reasonable doubt'" as to his indicted charges. *Id.* However, on appeal, Adams shifted his argument and asserted that the trial court erred by denying his directed verdict motion because the State, in his view, failed to present sufficient evidence of his intent to accomplish a sexual battery. *Id.* Because the "precise

argument" Adams raised on appeal was neither raised to or ruled upon by the trial court and because Adams did not renew his motion at the close of his case, this Court determined that Adams's argument was not preserved for appellate review. *Id.*

Here, Appellant asserts that the evidence presented by the State failed to establish the State's case against Appellant for ABHAN. (Int. App. Br. 12). However, this argument was not raised by Appellant during trial, and the trial court did not consider or rule on it. Instead, the argument presented by Appellant at trial focused on Appellant's theory that the State failed to present sufficient evidence to prove his guilt for the *indicted charges*. (Tr. 416-17, 481-82). Appellant did not argue that the State failed to present evidence sufficient to establish the elements of the lesser-included offense of ABHAN. Moreover, Appellant specifically agreed with the trial court that the jury could find Appellant guilty of the lesser included offense of ABHAN during the charge conference. (Tr. 484). *See Ramaker v. State*, 46 S.W.3d 519, 523 (Ark. 2001) ("[I]n order to preserve challenges to the sufficiency of the evidence supporting convictions for lesser-included offenses, defendants are required to address the lesser-included offenses, either by name or by apprising trial courts of the elements of the lesser-included offenses, in their motions for directed verdict."); *see also State v. Brown*, 402 S.C. 119, 125, 740 S.E.2d 493, 496 (2013) (holding Brown's issue with a jury instruction was not preserved for appellate review where Brown explicitly stated to the trial court that he had no objection to the instruction); *State v. Rios*, 388 S.C. 335, 342, 696 S.E.2d 608, 612 (Ct. App. 2010) (holding Rios waived his right to allege error with a jury charge on appeal where the trial court specifically asked if there were any objections to the instructions given and Rios responded that he had none).

Additionally, Appellant did not point to or mention a single specific element of the indicted offense or the lesser included offense that he believed the State's evidence was lacking. *See State*

v. Sterling, 396 S.C. 599, 612, 723 S.E.2d 176, 183 (2012) ("A general directed verdict motion . . . does not preserve any issue for appeal.").

Based on the foregoing, the trial court based its ruling solely on the question of whether evidence supporting all the elements of the *indicted* charges had been presented, and in doing so, did not rule upon or consider any arguments related to the lesser included crime of ABHAN. *See State v. Stone*, 376 S.C. 32, 36, 655 S.E.2d 487, 488-89 (2007) ("If a pitch was never thrown at trial, we cannot review whether the trial court made the proper call."); *State v. Gee*, 262 S.C. 373, 379, 204 S.E.2d 727, 729 (1974) ("Only matter that has been ruled on below can be reviewed.").

B. Abandonment as to Disarming a Firearm into a Vehicle Conviction

To the extent Appellant argues that the trial court erred in denying his motion for directed verdict as it relates to the indictment for disarming a firearm into a vehicle, this issue is abandoned on appeal. *See State v. Lindsay*, 394 S.C. 354, 364, 714 S.E.2d 554, 559 (Ct. App. 2011) ("Although Lindsay identified the [issue] in his statement of issues on appeal, he failed to address it in his brief, precluding consideration of appeal."); *Wright v. Craft*, 372 S.C. 1, 21, 640 S.E.2d 486, 497 (Ct. App. 2006) (holding an issue listed in a statement of issues on appeal but not addressed in the brief is abandoned on appeal). Appellant's directed verdict argument on appeal focuses exclusively on his ABHAN convictions and does not mention his indictment or conviction for disarming a firearm into a vehicle.

C. Merits

Should this Court determine that the issue of whether the trial court erred by denying Appellant's motion for directed verdict is preserved for appellate review and not abandoned, the trial court did not err in denying Appellant's motion for directed verdict because the State presented substantial evidence reasonably tending to prove Appellant guilty of attempted murder, the lesser

included offense of ABHAN, and disarming a firearm into an occupied vehicle. As discussed in Issue I, the question of whether the State presented any evidence of Appellant's guilt of ill treatment of an animal is moot on appeal because the jury found him not guilty of that charge. *See Sloan*, 380 S.C. at 535, 670 S.E.2d at 667 ("A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy.").

"A defendant is entitled to a directed verdict when the [S]tate fails to produce evidence of the offense charged." *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). "If there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must find the case was properly submitted to the jury." *Id.* at 292-93, 25 S.E.2d at 648. "[W]hen ruling on a directed verdict motion, the circuit court is concerned with the existence of evidence, not its weight." *State v. Oates*, 421 S.C. 1, 19, 803 S.E.2d 911, 921 (Ct. App. 2017) (citation modified).

i. Discharging a Firearm into an Occupied Vehicle

While Appellant did not specifically argue on appeal that the trial court erred in denying his general directed verdict motion as it related to the discharging a firearm into an occupied vehicle charge, evidence exists in the record reasonably tending to support Appellant's guilt of this charge. *See* S.C. Code Ann. § 16-23-440(B) ("It is unlawful for a person to discharge or cause to be discharged unlawfully firearms at or into any vehicle . . . while it is occupied.").

Specifically, Harris testified that when he found Appellant in the tree line near the house, Appellant directed him to an AR-15 assault rifle, which had a disengaged safety. (Tr. 196-97). Lane testified that he was shot inside of his truck while he was driving onto the property. (Tr. 240-41). Combs testified that he rode with Lane to drop Jackson off at her house and that within seconds of arriving at the house, 15 to 20 rounds hit the truck he was riding in. (Tr. 268-69).

Further, Combs testified that shortly after the shooting stopped, Jackson got out of the truck and Appellant appeared from the tree line with a rifle before the two went into the woods. (Tr. 271). Snelgrove testified that the only used casings found at the scene were consistent with rounds used in a rifle. (Tr. 307). Ponds and Marthers both used data from Appellant's personal electronic device to place him at or immediately around the house shortly before Lane called 911 to report being shot in his truck. (Tr. 135-36, 377, 385; State's Ex. 131; State's Ex. 132).

Therefore, in the light most favorable to the State, at least some evidence in the record reasonably tends to prove Appellant's guilt for discharging a firearm into an occupied vehicle. Thus, the trial court properly submitted this question to the jury. *See Oates*, 421 S.C. at 19, 803 S.E.2d at 921 ("[W]hen ruling on a directed verdict motion, the circuit court is concerned with the existence of evidence, not its weight.") (citation modified).

ii. Attempted Murder/ABHAN

Here, Appellant asserts that the State failed to "establish [its] case against Appellant for ABHAN." (Int. App. Br. 12). However, as the trial court determined, evidence exists in the record reasonably tending to support that Appellant's guilt of attempted murder and, even though not argued to or ruled upon by the trial court, the lesser included offense of ABHAN. *See generally* S.C. Code Ann. § 16-3-29 ("A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder."); S.C. Code Ann. § 16-3-600(B)(1)(a)&(b) ("A person commits the offense of assault and battery of a high and aggravated nature if the person unlawfully injures another person, and: . . . great bodily injury to another person results; or . . . the act is accomplished by means likely to produce death or great bodily injury."); S.C. Code Ann. § 16-3-600(A)(1) ("Great bodily injury' means bodily

injury which causes a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.").

Douglas testified that when he arrived at the house, he observed Lane sitting off to the side with multiple gunshot wounds before applying a tourniquet to Lane's arm to stop the bleeding. (Tr. 153-54). Harris testified that when he found Appellant in the tree line near the house, Appellant directed him to an AR-15 assault rifle, which had a disengaged safety. (Tr. 196-97). Lane testified that he was shot inside of his truck while he was driving onto the property. (Tr. 240-41). Lane also testified that after he was shot, he saw Appellant emerge from around the side of his truck pointing a rifle through the window. (Tr. 241). Lane confirmed his injuries included multiple gunshot wounds. (Tr. 243). Combs testified that he rode with Lane to drop Jackson off at her house and that within seconds of arriving at the house, 15 to 20 rounds hit the truck he was riding in. (Tr. 268-69). Further, Combs testified that shortly after the shooting stopped, Jackson got out of the truck and Appellant appeared from the tree line with a rifle before the two went into the woods. (Tr. 271). Snelgrove testified that the only used casings found at the scene were consistent with rounds used in a rifle. (Tr. 307). Ponds and Marthers both used data from Appellant's personal electronic device to place him at or immediately around the house shortly before Lane called 911 to report being shot in his truck. (Tr. 135-36, 377, 385; State's Ex. 131; State's Ex. 132). Dr. Fitzgerald testified that Lane's injuries were serious and life threatening to the point that Lane likely would have died without medical intervention. (Tr. 366-71). Moreover, multiple witnesses testified that Appellant was angry because he believed Jackson and others were removing items belonging to him or his family members from the house. (Tr. 198, 238, 285-88).

Therefore, in the light most favorable to the State, at least some evidence in the record reasonably tends to support Appellant's guilt of both attempted murder and ABHAN regarding

Lane and Combs. The evidence presented reasonably tends to support that Appellant was upset about items from his childhood home being removed as Jackson was in the process of moving out, regardless of whether that was actually occurring, and took it upon himself to prevent further removal of personal items by firing an assault rifle into Lane's truck, where Jackson was a passenger, which resulted in great bodily harm to Lane and was also likely to cause death or great bodily harm to anyone in the truck. Thus, the trial court properly submitted this question to the jury. *See Oates*, 421 S.C. at 19, 803 S.E.2d at 921 ("[W]hen ruling on a directed verdict motion, the circuit court is concerned with the existence of evidence, not its weight.") (citation modified).


CONCLUSION

Based on the foregoing, the State requests that this Court affirm Appellant's convictions for two counts of ABHAN and one count of discharging a firearm into an occupied vehicle, as well as his associated sentences.

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February 11, 2026
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