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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JIMMY LEE SALTERS,

APPELLANT

APPELLATE CASE NO. 2025-002043

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I.

Whether the trial court erred by refusing to grant appellant's motion for a directed verdict where the stated failed to present direct evidence or substantial circumstantial evidence appellant committed any over act under the theory of accomplice liability?

II.

Whether the trial court erred by refusing to charge the jury on duress for the third degree arson charge where sufficient evidence to support that appellant was in imminent apprehension of death or serious bodily injury was present in the record given that appellant stated that codefendant issued numerous threats if appellant did not comply with codefendant's instructions, and where appellant had no reasonable means of escape?

STATEMENT OF THE CASE

In September of 2023, the Spartanburg County grand jury indicted appellant for third degree arson, murder, and possession of a weapon during commission of a violent crime. R *(Indictments). Then, in May of 2025, the Spartanburg County grand jury indicted appellant for armed robbery and possession of a weapon during commission of a violent crime. R *(Indictments). On September 22, 2025, appellant's case was called to trial before the Honorable Cole Derham, Jr., and a jury. Tr. 1. Christopher Allen and Katrice Lyles represented appellant. Tr. 1. Barry Barnette prosecuted the case for the state. Tr. 1. The jury found appellant guilty as indicted. Tr. 390, l. 15 – 392, l. 12. Judge Derham imposed a total sentence of 35-years imprisonment comprising of 35 years as to murder, 25 years as to armed robbery, 15 years as to third-degree arson, and 5 years as to each weapons charge, set to run concurrently. Tr. 400, l. 3 – 401, l. 2. Appellant filed a timely notice of appeal. R *(Notice of appeal.

This brief follows.

STANDARD OF REVIEW

Issue 1 – Directed Verdict

“When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight.” *State v. Passio*, 433 S.C. 666, 673, 861 S.E.2d 785, 789 (Ct. App. 2021) (quoting *State v. Hernandez*, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009)). “A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged.” *Id.* “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.” *State v. Bostick*, 392 S.C. 134, 139, 708 S.E.2d 774, 777 (2011). 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. *State v. Hepburn*, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013).

Issue 2 – Jury Instruction

“The law to be charged to the jury is determined by the evidence presented at trial.” *State v. Hill*, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). “In criminal cases an appellate court sits to review errors of law only.” *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). “An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion.” *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000). “An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” *Id.*

ARGUMENT

I.

The trial court erred by refusing to grant appellant's motion for a directed verdict where the stated failed to present direct evidence or substantial circumstantial evidence appellant committed any over act under the theory of accomplice liability.

Relevant facts

Trial

On August 5, 2023, law enforcement received a call about an abandoned car possibly set on fire on Sharon Road. Tr. 146, ll. 12-18. Bones were located in the front portion of the car, Tr. 146, ll. 19-21, which were later identified as Leroy Palmer, Tr. 159, ll. 5-7; 182, ll. 4-12.

Investigator Elizabeth Renneker testified that on August 6, 2023, a missing person report was received for Palmer. Tr. 162, ll. 12-22. Law enforcement obtained Palmer's phone number and determined that appellant was the last person to call Palmer. Tr. 163, l. 3 – 164, l. 11. A senior analyst testified that the phone number ending in -0850 was appellant's number and authenticated his phone records. Tr. 185, ll. 13-24. Renneker testified that law enforcement began tracking appellants' phone and began gathering videos from several different locations. Tr. 164, ll. 12-18. Renneker testified that appellant was interviewed based on videos obtained from several locations. Tr. 167, l. 6 – 168, l. 7. He was interviewed on August 11, 12, and 16, 2023. Tr. 168, ll. 10-17. Renneker testified that during the first interview, appellant was confronted with evidence and photos that had been obtained during the investigation. Tr. 174, ll. 10-25. She explained that "He went into that he didn't know what happened. There was no plan, nothing like that. And then eventually he stated he didn't pull the trigger. He didn't shoot that man." Tr. 175, ll. 4-8. Renneker testified that appellant admitted he was involved and that he

arranged to purchase drugs from Palmer. Tr. 175, ll. 9-12. He picked up O'Dell Ferguson¹ to go with him. Tr. 175, ll. 13-16. She explained that appellant and Ferguson went to Circle K together before they went to Purem and that they were together at a Walmart in Dorman Center earlier in the day. Tr. 176, ll. 1-9. She also testified that they were together at the Hot Spot on Henry Street when video showed they had changed their clothes. Tr. 176, ll. 10-13.

Renneker then identified photographs that appellant was shown during his interview which he signed and identified himself in. Tr. 187, l. 24 – 189, l. 22. Appellant was also shown photographs from a deer camera that was beside where the car was burnt, and he verified that it was him. Tr. 189, l. 23 – 190, l. 5. He also verified his identity in a photograph from the deer camera where he was carrying a gas can. Tr. 190, ll. 6-11. Renneker testified that appellant verified he was driving the second car. Tr. 190, ll. 20-21.

On cross-examination, Renneker explained the timeline for the day of the incident as follows: Appellant's phone located him at Circle K on John Dodd Road at 11:32 p.m. that Friday night; he departed the Circle K at 11:35 p.m. wearing the hat, long white T-shirt, and blue jeans; he arrived at Purem at 11:37 p.m.; he left Purem at 12:35 a.m. on Saturday morning; at 12:45 a.m. he arrived at another gas station still wearing a hat, long white T-shirt, and blue jeans. Tr. 196, l. 22 – 199, l. 4. Renneker also explained that Palmer's car pulled in front of the camera in Purem; the driver door opened and four muzzle flashes are seen coming from inside the car; and finally, appellant approached the car on foot from the rear. Tr. 196, l. 22 – 199, l. 4. Renneker agreed that appellant was not in the passenger seat when the muzzle flashes went off. Tr. 199, ll. 5-7. She agreed that the weapon appeared to be in the car. Tr. 199, ll. 8-9. Renneker testified that in his statement appellant said he went over to the driver's side of the car, saw

¹ Ferguson is appellant's codefendant and his nickname was "Mook." Tr. 175, ll. 15-16. In addition, Ferguson proceeded to trial several months before appellant and was acquitted.

Palmer slumped over, and did not know if he had been knocked out or what happened. Tr. 200, ll. 2-10. She agreed that appellant said he was in his car “fooling with his little bit of marijuana,” and looked up to see what “looked like they were scuffling or something inside the car.” Tr. 200, ll. 14-18. She agreed that appellant said he told the codefendant that “he wasn’t going to have any part of doing anything else.” Tr. 200, l. 23 – 201, l. 1. She agreed that the codefendant told appellant he would participate and threatened the life of his newborn baby and mother. Tr. 201, ll. 2-5. Renneker agreed that at 12:42 a.m. appellant made an outgoing call to the mother of his children and received an incoming call from his mother, the two people the codefendant made threats against. Tr. 201, l. 19 – 202, l. 1.

Renneker testified that a search warrant was executed on appellant’s car, which did not have damage, and a quart of oil and gas can were recovered. Tr. 203, l. 7 – 205, l. 24. Renneker agreed that the first thing seen on the trail camera was Palmer’s car pulling past it and then appellant walking down with a gas can and a lighter. Tr. 206, l. 23 – 207, l. 6. Renneker agreed that appellant said he wanted to buy \$60 of marijuana from Palmer. Tr. 207, ll. 14-16. During the interviews, appellant said he and codefendant communicated by Chat, Facebook Messenger, and phone. Tr. 207, ll. 17-24. Renneker agreed that they did not find any discussion between the two of a plan to commit a robbery, murder, or a theft. Tr. 209, ll. 1-4. She agreed that appellant said several times he was threatened by the codefendant. Tr. 212, ll. 14-16. She agreed that appellant stated that he believed the codefendant was in a gang. Tr. 213, ll. 4-7. Renneker agreed that appellant’s car and home were searched and “normal everyday stuff was found.” Tr. 213, ll. 15-17. She agreed that appellant and his family were threatened numerous times based on his interviews. Tr. 213, ll. 18-23. Renneker testified that appellant was not in Palmer’s car holding the gun that fired the shots and that appellant said he had no knowledge that

the codefendant had a gun. Tr. 214, ll. 6-16. Finally, Renneker confirmed that no electronic conversation was found between appellant and codefendant. Tr. 214, ll. 17-21.

Investigator Brandon Letterman testified that he collected the deer camera footage. Tr. 229, ll. 14-15. On that footage an individual can be seen walking towards where the car was with a gas contained in his left hand. Tr. 233, ll. 2-8. He testified appellant initialed the photograph to confirm that it was him. Tr. 234, ll. 3-11. Letterman testified that he worked on Palmer and appellant's phone. Tr. 235, ll. 7-17. He testified at 10:49 p.m., appellant called Palmer for the first time. Tr. 244, ll. 11-17. He called a second time at 11:01 p.m. Tr. 245, ll. 7-12. He explained that a video recorded at the Circle K corroborated the phone records that put appellant there. Tr. 247, ll. 4-19. Appellant called Palmer again at 11:40 p.m. in the Purem area. Tr. 248, ll. 18-24. He called Palmer for the fourth time in the Purem parking lot at 11:59 p.m. Tr. 249, ll. 6-9. The fifth call was at 12:20 p.m. from the Purem parking lot. Tr. 250, ll. 10-17. Appellant called Palmer for the sixth time at 12:27 a.m. Tr. 250, l. 24 – 251, l. 5.

Lettermen testified that both phones, appellant's and Palmer's, were in the Purem parking lot. Tr. 251, ll. 6-9. He described that Palmer's car began to leave the parking lot, and it abruptly stopped, and several muzzle flashes can be seen. Tr. 252, ll. 3-16. A second vehicle appeared and both left. Tr. 253, ll. 1-9. Letterman testified that at 12:33 a.m. both devices are traveling together, and Palmer's vehicle is followed by appellant. Tr. 253, ll. 5-20. At 12:56 a.m. both phones arrived at the location where the burned vehicle was found. Tr. 256, l. 23 – 257, l. 4. Between 1:00 a.m. and 1:04 a.m. the deer camera captures a male with a gas can, and flames can be seen at 1:10 a.m. Tr. 257, l. 16 – 258, l. 12. He testified that later a burn pile was found less than a mile from Hot Spot where Palmer's wallet and clothes were found. Tr. 263, ll. 6-25. On cross-examination, Letterman agreed that the codefendant was the individual he was

testifying about. Tr. 270, ll. 4-14. Letterman agreed that the person with the white shirt, appellant, was not near the car when the muzzle flashes happened so you could assume appellant was not the shooter. Tr. 276, ll. 4-8.

Sergeant Michael S. Nix testified that a burned wallet was collected that had Palmer's name on a social security card. Tr. 288, l. 2 – 289, l. 20. Then, Lieutenant Paul Norris, who was involved with the interviews of appellant, testified that on the August 12, 2023, interview appellant mentioned robbing Palmer, robbing other people, and that he used to rob in the old days. Tr. 296, ll. 4-13. On cross-examination, Norris agreed that at no point during the interviews did appellant say there was a date, time, place, or specifics for a robbery. Tr. 300, ll. 3-13. He agreed that appellant's only expectations for the night was to buy marijuana. Tr. 300, ll. 14-17. He agreed that the codefendant was constantly eluding cameras that night. Tr. 302, ll. 8-15. Norris agreed that appellant continually talked about his fear of the codefendant. Tr. 302, ll. 2-4. He testified that he did not find any social media or phone record of a discussion between the codefendant and appellant discussing any plan. Tr. 304, ll. 15-22.

The state rested. Tr. 308, ll. 19-20.

State's Exhibits 3, 4, & 5

The state entered three interrogations with appellant on August 11, 12, and 16, 2023, into evidence during trial. R *(State's Exhibits 3-5). During the August 11, 2023, interrogation appellant identified codefendant as the other individual in the car. R *(State's Exhibit 3; 37:36 - 37:49). He agreed that he met Palmer with the codefendant at Purem and saw muzzle flashes in the car. R *(State's Exhibit 3; 38:09 - 39:22). Appellant again confirmed that the codefendant was in the car, but he did not know his phone number because they communicated through messenger. R *(State's Exhibit 3; 43:10 – 43:50). The officers asked appellant what the plan

with codefendant was and appellant responded that he did not know what codefendant planned to do. R *(State's Exhibit 3; 47:31 – 47:44). Appellant then explained that he went to buy marijuana from Palmer, but codefendant wanted cocaine. R *(State's Exhibit 3; 48:49 – 49:05). Appellant reiterated that he did not know what codefendant was thinking. R *(State's Exhibit 3; 55:00). The officers asked appellant if “there was ever a plan to rip Mr. Palmer,” and appellant responded, “not to my knowledge.” R *(State's Exhibit 3; 1:02:59 – 1:03:06). Appellant stated that he knew codefendant came with a gun. R *(State's Exhibit 3; 1:04:47 – 1:04:53). Appellant explained the only reason he did anything was because codefendant started threatening him about his kids. R *(State's Exhibit 3; 1:06:13 – 1:06:17). Appellant agreed that there was never a discussion between himself and codefendant. R *(State's Exhibit 3; 1:20:37 – 1:20:44). When asking about what happened at Purem, appellant stated that it looked like Palmer and codefendant were scuffling which was why he thought codefendant had hit Palmer. R *(State's Exhibit 3; 1:23:00 – 1:23:11). Appellant again stated that he did not know things would go like this. R *(State's Exhibit 3; 1:35:27 – 1:35:38). Appellant explained that he was fearful, scared, and was not trying to get his family killed since codefendant threatened him and his family. R *(State's Exhibit 3; 1:45:08 – 1:45:20).

During the August 12, 2023, interrogation appellant reiterated that he did not shoot Palmer and that he was scared because codefendant threatened his family. R *(State's Exhibit 4; 1:03 – 1:09). He explained the codefendant told appellant to follow him and it made him scared. R *(State's Exhibit 4; 6:55 – 7:04). He stated that codefendant had a phone, but it was off. R *(State's Exhibit 4; 7:07 – 7:17). The officer asked if appellant and codefendant had a conversation about robbing Palmer and appellant said they did not, but codefendant said that Palmer had some money and asked him about Palmer. R *(State's Exhibit 4; 7:25 – 7:56).

Appellant reiterated that he saw a scuffle, he got out of his car and saw blood, and the codefendant told him to follow him and threatened appellant's family. R *(State's Exhibit 4; 13:05 – 14:04). Appellant stated that codefendant was into gangs. R *(State's Exhibit 4; 14:45). Appellant stated that there was nothing mapped out concerning any plan to rob Palmer. R *(State's Exhibit 4; 15:27 – 15:44). He maintained that he met Palmer to get marijuana and did not know what was going on in the codefendant's mind. R *(State's Exhibit 4; 25:13 – 25:26; 35:12). Appellant stated that he did see a gun on codefendant. R *(State's Exhibit 4; 29:05 – 29:12).

Finally, during the August 16, 2023, interrogation appellant explained that the codefendant said he would ride with him to Purem to meet Palmer and appellant agreed he called Palmer. R *(State's Exhibit 5; 3:25 – 3:37). Appellant stated that codefendant told him if he did not help him with this he would "fire your ass up too." R *(State's Exhibit 5; 4:37 – 4:46). Appellant stated that the gun codefendant had was a small black Ruger. R *(State's Exhibit 5; 15:09). Appellant reiterated that he did not know what codefendant was going to do and that codefendant threatened him. R *(State's Exhibit 5; 17:30, 24:03).

Directed verdict motion

After the close of evidence, defense counsel moved for a directed verdict. Tr. 309, ll. 18-22. Counsel argued that the state presented no evidence that appellant knew there was a scheme or a meeting of the minds between appellant and the codefendant to establish a plan. Tr. 310, ll. 1-4. Specifically, he argued that there was "never any discussion, any evidence that might've been presented through the questioning of [appellant] that a scheme identifying a date, a place, a time, specifics to a robbery." Tr. 310, ll. 5-10. Counsel noted that the only thing introduced by the state was that at some time weeks prior, appellant mentioned codefendant's interest in Palmer

for a possible robbery but contended “that’s a far bridge to make to the robbery happening that night.” Tr. 310, ll. 11-15. He argued that there was no evidence that appellant knew anything the codefendant may have been thinking and to the contrary appellant told investigators he did not know what codefendant was thinking. Tr. 310, ll. 16-20.

The state responded that appellant made six phone calls with Palmer and argued he was the one who contacted Palmer to come to a meeting place. Tr. 311, ll. 4-7. The state argued that appellant talked to the codefendant about robbing other people and stated, “he had done robberies before.” Tr. 311, ll. 10-12. The state argued that appellant helped participate “trying to move the body or whatever,” and drove out first to be followed by the codefendant in Palmer’s car. Tr. 311, l. 24 – 312, l. 3. The state continued that appellant got the gas to cover up the crime and for the arson itself. Tr. 312, ll. 4-6. The state argued appellant was the only one with a cellphone and he did not call the police. Tr. 312, ll. 13-17. The state argued appellant “did everything but pull the trigger in this case.” Tr. 312, ll. 18-19. The state noted the only video of the appellant and codefendant together was at a Hot Spot on East Henry Street where appellant could be seen giving money to the codefendant. Tr. 312, l. 24 – 313, l. 5.

Defense counsel responded that while it understood the state’s argument about appellant’s conduct after the fact, the state did not choose to charge appellant with accessory after the fact. Tr. 314, ll. 9-13. He argued the conduct after the fact could possibly go to accessory after the fact, but it did not go to murder. Tr. 314, ll. 12-14. Counsel emphasized that the state has said appellant did not pull the trigger and argued that the state has “shown no evidence whatsoever he had any inclination or expectation from the codefendant, who is well established he did pull the trigger.” Tr. 314, ll. 14-18. He asserted that there were no dates, a place, a time, a location, or specifics mentioned from the stand. Tr. 314, ll. 19-21.

The trial court ruled that in the light most favorable to the non-moving party evidence was presented in the course of the trial that was susceptible to more than one reasonable inference from the jury related to the charged conduct, and thus, denied the motion for a directed verdict. Tr. 314, l. 24 – 315, l. 5. After the defense rested, counsel renewed all prior motions and objections. Tr. 318, ll. 15-18.

Verdict and sentencing

Ultimately, the jury found appellant guilty as indicted. Tr. 390, l. 14 – 392, l. 12. Defense counsel asked the court to consider that appellant was not the shooter when imposing the sentence. Tr. 395, ll. 12-15. The state asked for the maximum sentence. Tr. 399, ll. 19-20. The trial court imposed a total sentence of 35-years imprisonment comprising of 35 years as to murder, 25 years as to armed robbery, 15 years as to third-degree arson, and 5 years as to each weapons charge, set to run concurrently. Tr. 400, l. 3 – 401, l. 2.

Discussion

The trial court erred by refusing to direct a verdict as to appellant's murder, armed robbery, and third-degree arson charges because the state failed to present substantial circumstantial evidence that appellant had knowledge of a plan or joined with codefendant to carry out the plan necessary to support the state's accomplice liability theory.²

When ruling on a directed verdict motion where the state relies on circumstantial evidence, "the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." *State v. Brown*, --- S.C. ---, 929 S.E.2d 415, 429 (Ct. App. 2026) (citing *State v. Bennett*, 415 S.C. 232, 236-37, 781 S.E.2d 352, 354 (2016)). To prove that appellant was guilty under a theory of accomplice liability, also known as the theory of "the hand of one is the hand of all" the state had to prove the following points:

"A person who joins with another to commit a crime is criminally responsible for everything done by the other person which happens as a natural and probable consequence of the act; if two or more *are together, acting together, and assisting each other in committing the offense*, all are guilty; *a finding of a prior arranged plan or scheme is necessary for criminal liability to attach to the accomplice who does not directly commit the criminal act; when an act is done in the presence of and with the assistance of others*, the act is done by all." *State v. Washington*, 431 S.C. 394, 406, 848 S.E.2d 779, 785 (2020) (emphasis added). "In order to

² It is relevant to note that appellant's codefendant, whom the state agreed was the shooter, was acquitted for these charges. In any event, our Supreme Court denied relief in *Butler v. State*, 435 S.C. 96, 866 S.E.2d 347 (2021), because although Butler's codefendant was acquitted the state met its burden in Butler's trial by proving that Butler joined with his codefendants to rob Gutierrez, and his codefendant murdered Gutierrez in the course of the robbery. However, appellant's case is distinguishable where the state failed to present substantial circumstantial evidence to establish that appellant joined with his codefendant or had the requisite knowledge under the state's accomplice liability theory.

establish the parties agreed to achieve an illegal purpose, thereby establishing presence by pre-arrangement, the State need not prove a formal expressed agreement, but rather can prove the same by circumstantial evidence and the conduct of the parties.” *State v. Gibson*, 390 S.C. 347, 354, 701 S.E.2d 766, 770 (Ct. App. 2010) (citing *State v. Condrey*, 349 S.C. 184, 194, 562 S.E.2d 320, 325 (Ct. App. 2002)).

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 principle.” *State v. Hill*, 268 S.C. 390, 395-96, 234 S.E.2d 219, 221 (1977).”

In *State v. Harry*, appellant argued that the trial court erred by refusing to direct a verdict where the state failed to present any direct or substantial circumstantial evidence that he acted in concert with Saire Castro who pled guilty to voluntary manslaughter and admitted to shooting the victim. 413 S.C. 534, 537, 776 S.E.2d 387, 389 (Ct. App. 2015). There, this Court

determined that the state presented substantial circumstantial evidence from which the jury could infer that Harry planned with Castro to confront Bowens as the record established that Harry went out of his way to pick up Castro, had a lengthy private discussion, and Castro followed Harry to Bowens's home. *Id.* at 542, 776 S.E.2d at 392. This Court determined that the group arrived at Bowens's home because of a coordinated effort led by Harry. *Id.* This Court explained that once "they conspired to confront a known drug dealer, . . . the natural consequences that flowed from that planned altercation are the responsibilities of both men." *Id.*

In *Brown*, appellant moved for a directed verdict arguing that no evidence had been presented that he committed an overt act or acted in furtherance of any common scheme or plan which was required for culpability under the hand of one hand of all theory. *Id.* at ---, 929 S.E.2d at 424. This Court determined that the state's evidence amounted to substantial circumstantial evidence that Brown was involved in a common scheme or plan. *Id.* at ---, 929 S.E.2d at 430. Specifically, this Court noted that a neighbor identified that Brown was present at the time of the victim's murder and actively participated and Brown's cellphone data placed him at the crime scene around the time of the murder. *Id.* This Court continued that by staying with the group after they loaded their weapons and then traveling to the correct location amounted to evidence of an overt act by Brown and showed he was acting in concert with the group. *Id.* In addition, this Court noted that Brown traveled with the group from the mobile home park to Marlboro County and texted frequently leading up to the murder with the others identified as being involved with the murder. *Id.* Therefore, this Court affirmed the trial court's denial of Brown's motion for a directed verdict. *Id.*

In appellant's case, throughout trial testimony was elicited that there were no electronic communications between appellant and codefendant that revealed a time, date, place, location, or

specifics that any plan existed for appellant and codefendant to rob Palmer or engage in any criminal act together. Tr. 175, ll. 4-8; Tr. 207, ll. 17-24; Tr. 209, ll. 1-4; Tr. 214, ll. 17-21; Tr. 300, ll. 3-13; Tr. 304, ll. 15-22. While evidence was presented that appellant called Palmer on the incident date and that appellant was present at the location Palmer was ultimately killed, this evidence was insufficient to withstand a directed verdict motion since there was no direct or *substantial circumstantial evidence* that appellant had a prior arranged plan or scheme with codefendant to rob and murder Palmer. There was also not any direct or substantial circumstantial evidence that appellant aided or abetted his codefendant in a prearranged scheme to rob or murder Palmer, given that the state did not present evidence that a scheme existed between appellant and codefendant.

Moreover, although appellant's phone records and several video camera's established appellant's presence at the scene, that evidence was still not sufficient to establish his guilt as an aider or abettor. The lower court should not refuse to grant a 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) (Our Supreme Court held that the state failed to produce substantial circumstantial evidence reasonably tending to prove the guilt of the accused, and that a directed verdict should have been issued where the only evidence linking Mitchell to the burglary was a fingerprint which did not prove entry since Mitchell had been in and around the victim's house at least three times prior to the burglary); *see also State v. Martin*, 340 S.C. 597, 533 S.E.2d 572 (2000) (Our Supreme Court held that a defendant was entitled to a directed verdict in a murder case because the evidence raised only strong suspicion of Martin's guilt, and thus, was insufficient to withstand a directed verdict motion); *State v. Schrock*, 288 S.C. 129, 322 S.E.2d 450 (1984) (Our Supreme Court determined that a directed verdict was appropriate where

the evidence established that defendant was in the area of the murder scene, Marlboro cigarette butts were found at the scene which the defendant admitted he smoked, and his footprints were similar to those found in the area of the murder scene); *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2011) (Our Supreme Court held the trial court erred by refusing to direct a verdict because the evidence did not rise to the level of being substantial circumstantial evidence in a case involving the death of the victim by a mysterious arson despite evidence that Bostick had blood on his jeans, a chemical analysis of his shoes revealed gasoline, and several items belonging to the decedent were found in a burn pile in Bostick's yard).

In addition, the record supports that appellant did not know what the codefendant may have been thinking given that appellant steadfastly contended in his interrogations that his only intention for calling Palmer was to buy marijuana from Palmer. R *(State's Exhibit 3; 48:49 – 49:05); R *(State's Exhibit 4; 25:13 – 25:26; 35:12); *see also* Tr. 207, ll. 14-16; Tr. 300, ll. 14-17. In his three interrogations, appellant consistently told investigators that he did not know what codefendant may have planned or what he was thinking. R *(State's Exhibit 3; 47:31 – 47:44, 55:00, 1:02:59 – 1:03:06, 1:20:37 – 1:20:44, 1:35:27 – 1:35:38); R *(State's Exhibit 4; 7:25 – 7:56, 15:27 – 15:44); R *(State's Exhibit 5; 17:30, 24:03). Unlike *Harry*, the evidence in appellant's case was not sufficient for the jury to reasonable infer that appellant planned with the codefendant to rob Palmer or engage in any criminal act with his codefendant. *But see Harry*, 413 S.C. at 542, 776 S.E.2d at 392. At most, the state presented testimony that appellant mentioned robbing Palmer during his August 12, 2023, interview, however, during that interview appellant stated that a few weeks prior codefendant said that Palmer had some money and codefendant asked appellant about Palmer. Tr. 296, ll. 4-13; Tr. 310, ll. 11-15; R *(State's Exhibit 4; 7:25 – 7:56). This one-off reference to a vague prior conversation does not rise to the

level of substantial circumstantial evidence from which the jury could infer that appellant and codefendant had a plan to rob Palmer, or that appellant had knowledge or a prior arranged plan or scheme such that criminal liability attached under the theory of accomplice liability.

Further, as defense counsel argued below, although the state pointed to appellant's conduct after codefendant shot Palmer, the state chose not to charge appellant with accessory after the fact, and his conduct following the codefendant shooting Palmer did not go to murder. Tr. 314, ll. 9-14; *see also* S.C. Code Ann. § 16-1-40 ("A person who aids in the commission of a felony or is an accessory before the fact in the commission of a felony by counseling, hiring, or otherwise procuring the felony to be committed is guilty of a felony, and upon conviction, must be punished in the manner prescribed for the punishment of the principal felon."); S.C. Code Ann. § 16-1-55 ("A person who commits the offense of accessory after the fact must be punished based upon the classification below the punishment provided for the principal offense . . .").

It cannot be said that appellant, whom the state prosecuted as an accomplice, had knowledge of his codefendant, the principal's, criminal conduct. *Mattison*, 388 S.C. at 479-80, 697 S.E.2d at 584 (citing *Leonard*, 292 S.C. at 137, 355 S.E.2d at 272). Therefore, substantial circumstantial evidence did not exist in appellant's case to establish that appellant and his codefendant were acting together based on a prior arranged plan or scheme and the trial court erred by refusing to direct a verdict. Tr. 314, l. 24 – 315, l. 5; *Washington*, 431 S.C. at 406, 848 S.E.2d at 785; *Gibson*, 390 S.C. at 354, 701 S.E.2d at 770. Accordingly, this Court should issue a directed verdict of acquittal.

II.

Whether the trial court erred by refusing to charge the jury on duress for the third degree arson charge where sufficient evidence to support that appellant was in imminent apprehension of death or serious bodily injury was present in the record given that appellant stated that codefendant issued numerous threats if appellant did not comply with codefendant's instructions, and where appellant had no reasonable means of escape.

Relevant facts

Request for duress charge

After the parties rested, defense counsel requested a duress charge as to the arson charge appellant was facing. Tr. 319, ll. 17-19. Counsel argued that there was ample evidence to show, based on appellant's interviews, that he was afraid of the codefendant. Tr. 319, ll. 19-21. Counsel asserted that appellant explained that codefendant had a gun, threatened him, "said he would pop him, [and] said he would shoot him." Tr. 319, ll. 21-24. Counsel argued it strained reason not to think codefendant had a gun since it had been established he was the shooter, and thus, appellant was in imminent fear of great bodily injury or death. Tr. 320, ll. 4-7. He argued codefendant had a gun and appellant had no means of escape. Tr. 320, ll. 7-10. Counsel requested a jury charge of duress be given to the jury. Tr. 320, ll. 10-11.

The state cited *State v. Rocheville*, 310 S.C. 20, 425 S.E.2d 32 (1993), and noted that duress could not be used in a murder or voluntary manslaughter case. Tr. 320, ll. 13-17. The state argued that appellant could have driven away at any time and followed the codefendant for several miles down the road from Purem. Tr. 320, l. 22 – 321, l. 2. The state argued appellant could have called 911 at any time. Tr. 321, ll. 7-9. The state contended that duress was not

appropriate because he had the opportunity to leave. Tr. 321, ll. 9-13. The state asked the court to deny the charge of duress. Tr. 321, ll. 14-15.

Defense counsel responded that the law was clear that duress could not be used as a defense for murder or any lesser-included offense. Tr. 322, ll. 19-21. Counsel specified that the duress charge was requested for the arson charge. Tr. 322, ll. 21-22. He maintained that appellant had no means of escape as the codefendant was in relatively close proximity with the gun. Tr. 322, ll. 6-8. He pointed to appellant's interviews which established he was threatened by the codefendant, and that the codefendant was giving him instructions. Tr. 322, ll. 8-10.

The state responded that it believed that a duress charge would be a comment on the facts. Tr. 322, ll. 14-16. Because the state believed that the charge amounted to a comment on the facts, it argued that was "good enough reason to deny the request." Tr. 322, ll. 18-22.

The trial court stated that it reviewed the *Rocheville* case and heard the parties arguments. Tr. 322, ll. 22-25. The trial court ruled that it declined to give the charge of duress based on the reasoning of *Rocheville* "wherein it also declined to allow duress as a mitigating factor." Tr. 322, l. 25 – 323, l. 3. The court found appellant's situation analogous to *Rocheville* because appellant could have removed himself from any imminent danger that may have presented itself. Tr. 323, ll. 4-8. The court stated that appellant had a separate vehicle and was not in imminent danger as described in *Rocheville*. Tr. 323, ll. 8-10.

After the trial court charged the jury on the law, defense counsel renewed his objection to the trial court's refusal to charge duress. Tr. 383, ll. 24-25. During its deliberations, the jury sent a question requesting a copy of the charge. Tr. 388, ll. 22-23; R *(Court's Exhibit 5). The parties agreed to send the jury a copy of the charge. Tr. 388, l. 23 – 389, l. 2; R *(Court's Exhibit 6).

Discussion

In appellant's case, the trial court erred by refusing to charge duress, as requested by defense counsel, where evidence existed in the record to support the charge given that there was ample testimony that the codefendant threatened appellant and his family if he did not follow the codefendant's instructions. Accordingly, this Court should reverse.

"A request to charge a correct statement of the law on an issue raised by the indictment and the evidence presented at trial should not be refused." *Mattison*, 388 S.C. at 479, 697 S.E.2d at 583 (citing *State v. Austin*, 299 S.C. 456, 458, 385 S.E.2d 830, 831 (1989)). "However, if the trial judge refuses to give a specific charge, there is no error if the charge actually given sufficiently covers the substance of the request." *Id.* In reviewing jury charges for error, we must consider the court's jury charge as a whole in light of the evidence and issues presented at trial." *State v. Marin*, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016) (citing *State v. Brandt*, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011)). Accordingly, "[i]f there is any evidence to support a charge, the trial court should grant the request." *Brandt*, 393 S.C. at 550, 713 S.E.2d at 603 (citing *State v. Williams*, 367 S.C. 192, 195, 624 S.E.2d 443, 445 (Ct. App. 2005)).

Concerning a requested jury charge for coercion our Supreme Court has explained that,

To excuse a criminal act, the degree of coercion must be present, imminent, and of such a nature as to induce a well-grounded apprehension of death or serious bodily harm if the act is not done. Coercion is no defense if there is any reasonable way, other than committing the crime, to escape the threat of harm. The fear of injury must be reasonable.

State v. Holliday, 333 S.C. 585, 588, 510 S.E.2d 436, 438 (Ct. App. 1998) (citing *State v. Robinson*, 294 S.C. 120, 363 S.E.2d 104 (1987)). In addition, "[c]oercion and duress envision a third person compelling another by threat of immediate physical violence to commit a crime

against someone else or someone else's property.” *Id.* (citing *Fraiser v. State*, 306 S.C. 158, 162, 410 S.E.2d 572, 574 (1991)).

In *Rocheville*,³ two movie theater employees were murdered. 310 S.C. at 22-23, 425 S.E.2d at 33-34. During questioning, Rocheville admitted he was at the theater but maintained that a codefendant shot one of the employees while he watched the movie. *Id.* at 23, 425 S.E.2d at 34. He admitted to searching one of the employees cars but at the direction of a codefendant. *Id.* He also admitted he left with the codefendant and the codefendant handed him a gun and said, “it’s either you or him,” regarding one of the movie theater employees. *Id.* Rocheville took the employee out of the van and shot him. *Id.* Our Supreme Court determined that the evidence presented in this case did not support duress. *Id.* at 25, 425 S.E.2d at 35. Specifically, the Court explained that according to Rocheville’s confession, a codefendant handed him a loaded gun, and thus, “[w]hen Rocheville held the loaded gun in his hand, the necessary imminent nature of the duress was removed.” *Id.* Our Supreme Court determined that Rocheville could have taken the gun he was given and escaped safely. *Id.* Therefore, the Court held that no duress was present at the time of the murder of the employee. *Id.*

In *State v. Benjamin*, a trial court charged duress where Benjamin testified that he only participated in the robbery because his codefendant threatened to shoot him if he did not. 345 S.C. 470, 474, 549 S.E.2d 258, 260 (2001). There, defense counsel objected to language that duress “could be” a defense to robbery, but the trial court declined to provide further instructions. *Id.* Our Supreme Court determined that it was “patent the judge’s statement that

³ The *Rocheville* Court also determined that duress is not a defense to murder and does not mitigate murder to voluntary manslaughter under South Carolina law. *See id.* at 26, 425 S.E.2d at 35-36.

duress ‘could be’ a defense was simply an attempt to clarify for the jury that, although duress could not be a defense to murder, it could be a defense to robbery or armed robbery.” *Id.*⁴

Ample evidence existed in the record to support appellant’s request for a duress jury instruction. Appellant’s three interrogations established that the codefendant threatened him if he did not participate, threatened to hurt his family and his kids if he did not participate, and that codefendant told appellant he would “fire your ass up too,” if he did not help. R *(State’s Exhibit 3; 1:06:13 – 1:06:17, 1:45:08 – 1:45:20); R *(State’s Exhibit 4; 1:03 – 1:09, 13:05 – 14:04); R *(State’s Exhibit 5; 4:37 – 4:46, 17:30, 24:03). In addition, several witnesses testified during trial that appellant had stated that codefendant threatened the life of his newborn baby and mother and that appellant was fearful of the codefendant. Tr. 201, ll. 2-5; Tr. 212, ll. 14-16; Tr. 302, ll. 2-4. Because evidence existed that appellant was in immediate threat of physical danger which supported the charge, the trial court erred by refusing to grant appellant’s request. *Brandt*, 393 S.C. at 550, 713 S.E.2d at 603; *Williams*, 367 S.C. at 195, 624 S.E.2d at 445.

Moreover, the trial court’s reliance on *Rocheville* was misplaced. Tr. 322, l. 22 – 323, l. 10. Unlike in *Rocheville*, the imminent nature of duress was not removed in appellant’s case given that codefendant continued to threaten appellant to participate after codefendant shot Palmer and appellant had no means of escape where codefendant remained in close proximity to

⁴ Notably, the *Benjamin* Court suggested the following instruction in cases where the defense of duress is raised:

To establish duress which will excuse a criminal act, the degree of coercion must be present, imminent, and of such a nature as to induce a well-grounded apprehension of death or serious bodily harm if the act is not done. Coercion is no defense if there is any reasonable way, other than committing the crime, to escape the threat of harm. The fear of injury must be reasonable.

See *Benjamin*, 345 S.C. at 475 & n. 3, 549 S.E.2d at 260 & n.3.

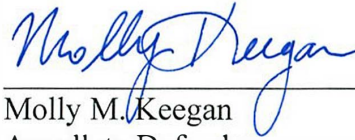
him with a gun. *But see Rocheville*, 310 S.C. at 25, 425 S.E.2d at 35. Although appellant did have a separate vehicle, that did not remove his imminent, and well-grounded apprehension of death or serious bodily harm, not only to his person but to his family, if he did not follow codefendant's instructions, because codefendant threatened to "fire your ass up too," if he did not help. R *(State's Exhibit 5; 4:37 – 4:46). Moreover, unlike *Rocheville* where our Supreme Court determined that Rocheville could have taken the gun he was given and escaped safely, it cannot be said that appellant could escape safely where he was unarmed and codefendant continually threatened to harm him and his family if he did not help him. *But see Rocheville*, 310 S.C. at 25, 425 S.E.2d at 35. The trial court thus erred by declining to charge duress because appellant was not in imminent danger as described by *Rocheville*. Tr. 323, ll. 8-10.

Further, defense counsel properly acknowledged below that duress is not a defense to murder or its lesser-included offenses. Tr. 322, ll. 19-21. However, in *Benjamin*, a duress charge was given in a case concerning a robbery. 345 S.C. at 474, 549 S.E.2d at 260. It logically follows that a duress charge would be appropriate in relation to appellant's arson charge, and thus, instructing the jury on duress would entail the current and correct law of South Carolina. *See State v. Davis-Kocsis*, 436 S.C. 468, 480, 872 S.E.2d 415, 421 (Ct. App. 2022) (citing *Marin*, 415 S.C. at 482, 783 S.E.2d at 812) ("[T]he trial court is required to charge only the current and correct law of South Carolina.").

Accordingly, the evidence presented at trial established that appellant was in imminent apprehension of death or serious bodily harm if he did not follow codefendant's instructions and that he had no reasonable way to escape the harm. *See Holliday*, 333 S.C. at 588, 519 S.E.2d at 438; *Hill*, 315 S.C. at 262, 433 S.E.2d at 849. The trial court abused its discretion by denying appellant's request to charge duress to the jury.

CONCLUSION

Based on the foregoing arguments, appellant respectfully requests that this Court reverse his convictions and sentence and remand to the Court of General Sessions of Spartanburg County for a new trial.



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ATTORNEY FOR APPELLANT

This 25th day of June, 2026.