

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Abbeville County
Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

JAMES ROSCOE SCOFIELD,

Appellant.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General
Bar # 68571

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

P. O. Box 516
Greenwood, SC 29649-0516
(864) 942-8800

RECEIVED

FEB 05 2014

SC Court of Appeals

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....1

STATEMENT OF FACTS1

ARGUMENT

 The trial court did not err in denying the motion for directed
 verdict on the charge of conspiracy to murder since
 Appellant’s codefendant testified on direct examination that
 Appellant asked for help to kill Appellant’s girlfriend’s
 mother and requested codefendant to bring weapons and
 codefendant procured large machete-size knives.5

CONCLUSION.....8

TABLE OF AUTHORITIES

Cases:

<u>State v. Buckman</u> , 347 S.C. 316, 55 S.E.2d 4026 (2001)	7
<u>State v. Crawford</u> , 362 S.C. 627, 608 S.E.2d 886 (Ct. App. 2005)	6, 7
<u>State v. Givens</u> , 267 S.C. 47, 225 S.E.2d 867 (1976).....	6
<u>State v. McGowan</u> , 347 S.C. 618, 557 S.E.2d 657 (2001)	5
<u>State v. Needs</u> , 333 S.C. 134, 508 S.E.2d 857 (1998)	7
<u>State v. Pitts</u> , 256 S.C. 420, 182 S.E.2d 7381 (1971)	6
<u>State v. Stuckey</u> , 347 S.C. 484, 556 S.E.2d 403 (Ct. App. 2001)	5, 6
<u>State v. Walker</u> , 349 S.C. 49, 562 S.E.2d 313 (2002)	5
<u>State v. Wilson</u> , 315 S.C. 289, 433 S.E.2d 864 (1993).....	6
<u>Town of Hartsville v. Munger</u> , 93 S.C. 527, 77 S.E. 219 (1913)	7

Other authorities:

S.C. Code Ann. § 16-17-410	5
15A C.J.S. Conspiracy § 98	6

STATEMENT OF ISSUES ON APPEAL

The trial court did not err in denying the motion for directed verdict on the charge of conspiracy to murder since Appellant's codefendant testified on direct examination that Appellant asked for help to kill Appellant's girlfriend's mother and requested codefendant to bring weapons and codefendant procured large machete-size knives.

STATEMENT OF THE CASE

The Abbeville County Grand Jury indicted Appellant Scofield for second degree sexual conduct with a minor (CSC 2d), contributing to the delinquency of a minor (CDM), and conspiracy to commit murder. Scofield proceeded to jury trial before the Honorable Eugene C. Griffith, Jr. The jury acquitted Scofield of CSC 2d and CDM, but found Scofield guilty of conspiracy to commit murder. Judge Griffith sentenced Scofield under the Youthful Offender Act and referred Scofield to the shock incarceration program.

STATEMENT OF FACTS

Appellant Scofield, nineteen years old and a troubled young man to be sure, pursued and won the affections of a fifteen-year-old girl, who was the victim's daughter (Daughter). Scofield arranged for his friend to bring him large, machete-like knives because Scofield wanted to kill the girl's disapproving mother (Mother), who is the victim in this case.

Mother testified she told Scofield to leave Daughter alone because she was too young. Scofield replied, "he would do whatever he had to do – whatever he wanted to do, he was going to see her and it didn't matter what he had to do." She told Daughter that Scofield was too old for Daughter to date. When Daughter was late returning home, Mother called law enforcement on May 28, 2011. Tr. pp. 61-63 (Direct quote, Tr. p 62,

lines 18-20).

Mother testified she was contacted by the police at about nine p.m. and told they found Daughter. Mother went to the police station for Daughter. Mother testified Daughter was “rough looking” and “had scratches all over her. She did not look herself. She just looked like she was wore slap out.” Tr. p. 63, lines 8-25.

Daughter testified that on May 28, 2011, she met Scofield and his friend, Justin Fields, after Scofield arranged to meet her by text. They met up in the square in Abbeville. Scofield had sex with Daughter in the church graveyard. Daughter testified that she and Scofield hid out from both the police and her mother. Daughter testified they were subsequently caught by police at about 9:30 p.m. Tr. pp. 81-86.

Ultimately, Scofield was acquitted for the charges related to his conduct with Daughter -- criminal sexual conduct and contributing to the delinquency of a minor. One could speculate why. Certainly, the inexplicable failure of the examining doctor to perform a full rape kit examination may be part of the explanation. Tr. pp. 148-149. The other reason may have to do with Daughter’s demeanor, described by defense counsel as “a little like a robot giving that testimony.” Tr. p. 199, lines 24-25. However, the conspiracy to murder Mother was beyond the ken of Mother or Daughter while these troubling events unfurled.

Testimony serving as direct evidence of the illicit agreement comes on direct examination of Scofield’s friend and codefendant, John Calvert. Calvert testified he received a phone call from Scofield on May 28 asking for help to try and kill Mother. Tr. p. 97. Scofield asked Calvert “to get what I could and come up there.” Tr. p. 98, line 1. Calvert understood that as a request for Calvert to get weapons. Scofield gave Calvert the

name and number of a cab company to bring Calvert to the square. Scofield sent another friend, Justin Fields, to pay for the cab. Calvert brought two machete-size knives with him. Tr. p. 98. The knives were about ten inches long. Tr. p. 99, lines 1-3. Calvert pled guilty to conspiracy and received probation. Tr. pp. 99-100.

On cross-examination, Calvert changed his testimony and claimed Scofield did not tell him why he wanted the knives and only told him about killing Mother after Scofield and Calvert were already in jail. Tr. pp. 103-104. Calvert stuck with this recantation through the brief redirect examination. Tr. p. 105, lines 11-15. It is based on this recantation that Scofield argues he was entitled to directed verdict.

Halie Owenby, friends with both Daughter and Scofield, testified that the day before, Scofield complained about Mother during a phone conversation and said "I hate that bitch. I want her dead." Tr. p. 108, lines 15-17. Owenby further testified as follows: "He called me and he said, 'the deed is done.' And I was like, 'What are you talking about?' He said, 'I did it.' I said, 'What are you talking about?' He said, 'I killed Kim.'" Tr. p. 107, lines 20-23. The record is devoid of explanation as to why Scofield falsely claimed success in murdering Mother.

Lieutenant John Garner responded to the missing persons report for Daughter. He found Fields and Calvert in the park. Although not forthcoming at first, Fields and Calvert told Lieutenant Garner they were waiting on Scofield and Daughter, who were behind the church. Lieutenant Garner noticed a knife handle sticking out of Calvert's pocket. Lieutenant Garner took custody of that knife and recovered other knives from

Calvert's backpack.¹ Tr. pp. 116-118.

Scofield admitted in his first statement to police that he intended to harm Mother. Tr. p. 122. In his second statement, he claimed Calvert did not know what the knives Calvert brought were for and that Scofield asked Calvert to bring them because Scofield was going to harm himself. Tr. p. 122; p. 125.

Scofield testified in his own behalf, and his less-than-credible explanation about the knives (the third) probably helped convince the jury to convict. Scofield claimed he was playing in the woods and jumping across the creek with Daughter and Fields. Daughter scratched up her legs in the briars, so Scofield asked Calvert to bring knives with him to cut the briars. Tr. pp. 170-172. On cross-examination, he admitted it was near dark (8 p.m.) when he spoke with Calvert about the knives. He did not ask Calvert to bring band aids or flashlights. Tr. pp. 181-182. He admitted paying for Calvert's taxi ride. Tr. p. 182. Scofield claims the reason he told law enforcement that he wanted the knives to hurt himself was because the Officers were being persistent and adamant. Tr. p. 177. Scofield claimed he told law enforcement that he did not intend to hurt Mother or Daughter when he gave the first statement. Then oddly, five hours later, he requested the police to return just to provide the same story again. Tr. p. 183-184.

¹ The knife in Calvert's pocket was eleven inches long with a six-inch blade. Three more knives were found in the backpack: a sixteen-inch long knife with an eleven-inch blade, a seventeen-inch knife with a nine-and-a-half inch blade, and a nine-inch knife with a five-inch blade. Tr. p. 117, lines 6-15.

ARGUMENT

The trial court did not err in denying the motion for directed verdict on the charge of conspiracy to murder since Appellant's codefendant testified on direct examination that Appellant asked for help to kill Appellant's girlfriend's mother and requested codefendant to bring weapons and codefendant procured large machete-size knives.

Scofield argues the trial court should have granted directed verdict based on his codefendant's cross-examination testimony recanting the direct examination testimony that Scofield asked for help to murder his girlfriend's mother (Mother). The direct examination testimony is direct evidence supporting the agreement or conspiracy to murder Mother. Which version of events was more credible is a decision for the jury, not the trial court, so the trial court did not err in refraining from granting the directed verdict.

When considering a motion for directed verdict, the trial court is concerned with the existence of evidence, not its weight. State v. Walker, 349 S.C. 49, 53, 562 S.E.2d 313, 315 (2002). In reviewing the denial of a motion for a directed verdict, the reviewing court must view the evidence in the light most favorable to the State. Id. "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find that the case was properly submitted to the jury." State v. McGowan, 347 S.C. 618, 622, 557 S.E.2d 657, 659 (2001).

A "conspiracy" is "a combination or agreement between two or more persons for the purpose of accomplishing an unlawful object or a lawful object by unlawful means." S.C. Code Ann. § 16-17-410. "The gravamen of conspiracy is an agreement or combination." State v. Stuckey, 347 S.C. 484, 502, 556 S.E.2d 403, 412 (Ct. App. 2001). "However, a formal agreement is not necessary to establish a conspiracy, as the conspiracy

may be proven by circumstantial evidence and the conduct of the parties.” Id., 347 S.C. at 502-03, 556 S.E.2d at 412 (citations and internal quotation marks omitted).

Overt acts committed in furtherance of a conspiracy are not elements of the conspiracy, just evidence of the existence of the conspiracy. State v. Wilson, 315 S.C. 289, 294, 433 S.E.2d 864, 867-68 (1993). “Once an agreement has been reached, the crime of conspiracy has been committed; no further act need take place. Conspiracy is an inchoate offense, and is a crime in and of itself.” State v. Crawford, 362 S.C. 627, 639, 608 S.E.2d 886, 892 (Ct. App. 2005) (citation and internal quotation marks omitted). “Prohibition of conspiracy serves two distinct purposes: the punishment of group behavior and the control of inchoate activities.” Id., 362 S.C. at 639, 608 S.E.2d at 893 (quoting 15A C.J.S. Conspiracy § 98).

Direct evidence of the conspiracy was provided by Calvert on direct examination. “The weight to be attached to the testimony of an accomplice is for the jury alone who must consider it in view of the other evidence and reach their conclusion on the view of the whole case.” State v. Pitts, 256 S.C. 420, 426, 182 S.E.2d 738, 741 (1971). “[T]he testimony of an accomplice is altogether for the jury and, if believed, the jury may convict even when his testimony is not corroborated.” State v. Givens, 267 S.C. 47, 52, 225 S.E.2d 867, 869 (1976).

Calvert testified Scofield “called me saying that he wanted me to help him try to murder, I think it’s, Karlie’s mom.” Tr. p. 97, lines 23-24. Scofield told Calvert “to get what I could and come up there.” Tr. p. 98, line 1. Calvert explained this meant to gather weapons. Tr. p. 98, lines 2-4. Scofield gave him the name of the cab company to use and the phone number, and sent another friend, Fields, to pay Calvert’s fare. Tr. p. 98.

In the instant case, Scofield requests this Court to consider only the cross-examination testimony from Calvert and disregard his direct examination testimony that firmly establishes Scofield's guilt. It is up to the jury, not the trial court, to decide which of the dueling versions of events were truthful. "[T]he jury is the judge of which contradictory statement of the witness is the truth." State v. Needs, 333 S.C. 134, 144, 508 S.E.2d 857, 862 (1998) (citation and internal quotation marks omitted); see State v. Buckman, 347 S.C. 316, 324 n.6, 55 S.E.2d 402, 406 n.6 (2001) (credibility of a witness goes to the weight of the evidence and not consideration by the trial court in determining whether to grant a directed verdict); Crawford, 362 S.C. at 634, 608 S.E.2d at 890 (finding the contradiction between accomplice's statement to police and subsequent trial testimony disavowing knowledge of Crawford's involvement was a matter of weight for the jury to resolve).

In the instant case, the jury was free to decide which version of events Calvert gave was the truth. Given the potential bias Calvert had for his friend and the patently incredible testimony from Scofield himself, the jury's verdict is supported by evidence in the record and the trial court did not err in denying the motion for directed verdict. See Town of Hartsville v. Munger, 93 S.C. 527, 77 S.E. 219 (1913) ("False and conflicting statements . . . have always been regarded as some evidence of guilty knowledge and intent.").

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General
Bar # 68571

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

BY: 

DAVID SPENCER

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

February 5, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Abbeville County
Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

JAMES ROSCOE SCOFIELD,

Appellant.

**DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

Respondent proposes the following to be included in the Record on Appeal:

Transcript, August 28-30, 2012, pp. 44-47

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.


Respectfully submitted

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General
Bar # 68571

DAVID M. PASCOE
Solicitor, Sixteenth Judicial Circuit

By:



DAVID SPENCER

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

February 5, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Abbeville County
Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

JAMES ROSCOE SCOFIELD,

Appellant.

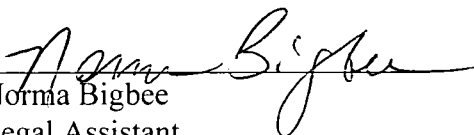
PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within **Initial Brief of Respondent and Designation of Matter** on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

**Kathrine H. Hudgins, Esquire
Appellate Defender
SC Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589**

I further certify that all parties required by Rule to be served have been served.

This 5th day of February, 2014.


Norma Bigbee
Legal Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

February 5, 2014

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: **State of South Carolina v. James Roscoe Scofield**
Appellate Case No: 2012-213731

Dear Ms. Kitchings:

Enclosed please find the original of the **Initial Brief of Respondent and Designation of Matter** in the above matter for filing in your office. By copy of this letter we are serving opposing counsel with this brief today.

Sincerely,

David Spencer
Senior Assistant Attorney General
Bar No: 68571

DS/nb
Enclosures

cc: Kathrine H. Hudgins, Esquire (2 copies enclosed)
Trisha Allen, Victim Services (1 copy enclosed)

RECEIVED

FEB 05 2014

SC Court of Appeals