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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chesterfield County
Donald B. Hocker, Circuit Court Judge
Appellate Case No. 2014-002322

THE STATE OF SOUTH CAROLINA,

Respondent,

v.

CURTIS BRENT GORNY,

Appellant.

INITIAL BRIEF OF RESPONDENT

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The trial judge did not abuse his broad discretion in denying Appellant's motion for a change of venue because holding the trial in the Chesterfield County Courthouse did not deny Appellant his right to a fair and impartial jury under the facts of this case.

STATEMENT OF THE CASE

Appellant was indicted in January 2014 for attempted murder and failure to stop for a blue light. In September 2014, he was indicted for two additional counts of attempted murder and one count of possession of a weapon during the commission of a violent crime. On October 20, 2014, Appellant's jury was selected, and thereafter, defense counsel made a pretrial motion to change the venue of Appellant's trial. (R. p. 1-47). Judge Donald B. Hocker tentatively denied the motion pending the presentation of case law, and the next morning, he denied the motion again, ruling there was no prejudice to Appellant, no due process violation, and that he would instruct the jury to decide the case only on the evidence presented in the courtroom and admonish them not to undertake any independent investigation. (See R. p. 46-85). Thereafter, Appellant was tried on October 21-22, 2014, before Judge Hocker and a jury. The jury found Appellant guilty of all five offenses, and Judge Hocker sentenced Appellant to twenty-five years, concurrent, for each of the attempted murder convictions, five years, consecutive, for the weapon charge, and five years, consecutive, for the failure to stop for a blue light charge. This appeal follows.

ARGUMENT

The trial judge did not abuse his broad discretion in denying Appellant's motion for a change of venue because holding the trial in the Chesterfield County Courthouse did not deny Appellant his right to a fair and impartial jury under the facts of this case.

Background Facts

Olivia Weaver and Appellant began a relationship in October of 2011, and as a result, Ms. Weaver became pregnant with Appellant's child. (R. p. 91). Ms. Weaver and Appellant split up in May of 2012, and their child was born on August 7, 2012. (R. p. 92; p. 106). At some point thereafter, Ms. Weaver initiated child support proceedings, and a hearing was scheduled at the Chesterfield County Courthouse on February 13, 2013. (R. p. 92-93). Ms. Weaver's acquaintance, Nikita Lockleer, drove her to the courthouse, and Johnny Nolan, her stepfather, rode with them. (R. p. 93). Appellant did not appear at the hearing and an amount of child support was set in his absence. (R. p. 94). After she left the hearing, she encountered Appellant as she was heading out of the front door of the courthouse. (R. p. 95). She advised him he was late and walked past him out the door and proceeded to the car, which was parked on Main Street in front of the courthouse. (R. p. 95-96). Nikita Lockleer and Johnny Nolan were waiting for her in the car. (R. p. 96).

Around the time Ms. Weaver arrived at the car, Appellant drove up "out of nowhere," hastily parked his vehicle across three parking spaces, and began firing a gun at them. (R. p. 96). The first shot hit the hood of the car, and the second shot hit Mr. Nolan in the arm. (R. p. 120). Ms. Weaver tried to hide in the back seat of the car, but Appellant nevertheless shot Ms. Weaver twice at "point range" in the back and in the chin area. (R. p. 97). He then fired a final shot at Ms. Weaver, but it missed her and

struck the pavement instead. (R. p. 126). Both Ms. Weaver and Mr. Nolan testified that no one in Lockleer's vehicle had a gun or threatened Appellant. (R. p. 98; p. 120-21).

Jamie Gibson, a pastor and also an employee at the Chesterfield Detention Center, was escorting some inmates into the courthouse when he heard shots. (R. p. 131-33). When he turned to look for the shooter, he saw Appellant approaching Ms. Weaver and firing three shots at her. (R. p. 133; p. 135). Mr. Gibson ran toward the scene yelling. (R. p. 133). As he got closer, Appellant ran back to his vehicle. (R. p. 133). Mr. Gibson then noticed Mr. Nolan lying down in across the front seat with his arm hanging down. (R. p. 133). Mr. Gibson attended to Ms. Weaver, who was lying on the ground, and comforted her until the ambulance arrived. (R. p. 134). Mr. Gibson saw no weapons in the vicinity of either of the victims. (R. p. 138). SLED agents who later processed the scene did not find any weapons in or around the victims' car. (R. p. 219).

A probation agent, Mark Funderburk, was working inside the courthouse when he heard gunshots and heard someone scream "he's gonna kill her." (R. p. 143). When he ran outside, he saw Appellant pointing a gun over the hood of a car. (R. p. 143). As he got closer, he made eye contact with Appellant, and at that point Appellant turned around, got in his vehicle, and "sped off" at a high rate of speed. (R. p. 144-45). When he approached the victims' car, he saw Jamie Gibson trying to talk to Ms. Weaver and Mr. Nolan. (R. p. 147). One of the deputies in the vicinity reported the shooting to dispatch and 911. (R. p. 147-48). This officer also reported that Appellant, Curtis Gorny, was the shooter. (R. p. 148).

Sergeant David Rainwater was in the vicinity when he heard about the shooting over the radio. (R. p. 152). Sergeant Rainwater caught up with Appellant on Highway 9

going toward Pageland. (R. p. 154-55). His blue lights and siren were on the whole time. (R. p. 156). At that point, Appellant started speeding and weaving through traffic to try to get away. (R. p. 154-55). In fact, Appellant eventually began traveling at a speed of more than one hundred miles per hour. (R. p. 176). Other officers became involved in the pursuit, and a "spike strip" was placed in the roadway near Douglas Machine Shop in an attempt to disable Appellant's vehicle. (R. p. 155-58). Although the spike strip appeared to damage one of Appellant's tires, Appellant continued trying to evade the officers. (R. p. 158). At one point, Appellant stuck his gun out of the car window and fired a shot at Sergeant Timmy Knight. (R. p. 177). Sergeant Knight testified he had "no doubt" in his mind that Appellant was attempting to shoot him. (See R. p. 182). Later, Appellant actually threw the gun out of the window. (R. p. 178).

Finally, after the pursuit had gone on for about seventeen miles, Lieutenant Spence Vaughn was able to force Appellant off the road. (R. p. 179). Appellant was then removed from the vehicle and, after a scuffle, was taken into custody. (R. p. 168-69; p. 180). Appellant "never said a word" during this process, and Sergeant Rainwater transported Appellant to the county detention center. (R. p. 169). Significantly, videotapes from three of the officers' patrol cars were introduced into evidence without objection at trial. (See R. p. 162; p. 183; p. 195; see State's Exhibits # 1, 2, & 3). Two guns were also admitted into evidence without objection. (R. p. 208-209). The first was a .357 chrome revolver found in the roadway after Appellant dropped it out of his car window. (R. p. 206-208). The second was a nine millimeter handgun which was found in Appellant's vehicle. (R. p. 206-209). The SLED firearms examiner testified that several lead fragments and bullet jacket fragments found on the scene bore insufficient

markings for identification and/or could not be conclusively matched with a particular firearm, but stated that three fired cartridge cases found in Appellant's vehicle were in fact fired by Appellant's .357 revolver. (R. p. 206-207; p. 258-66). He also noted that Appellant's revolver was a "five shot," meaning five cartridges could be loaded into the revolver for firing. (R. p. 267).

Appellant testified at trial and claimed that he acted in self-defense when Ms. Weaver's acquaintance, Nikita Lockleer, began shooting at him when he pulled up to talk to Ms. Weaver as she was preparing to the leave the court house. (R. p. 286-96). He claimed Mr. Lockleer fired at him but did not hit him, and stated he attempted to retreat but then returned fire because he was in fear for his life. (R. p. 291-94). Appellant testified he had a firearm for his protection because "I've been known to carry large amounts of money." (R. p. 293). Initially Appellant testified he fired "two or three" shots at the courthouse scene. (R. p. 294, lines 20-25). Upon prodding from his attorney, he changed his story and said he was "sure" he fired only twice. (R. p. 295; p. 309). He could not explain how Ms. Weaver and Mr. Nolan were shot a total of three times. (R. p. 312-13). Appellant claimed he was firing "random" shots and never intended to shoot anyone. (R. p. 304; p. 331).

Regarding the second set of charges including failure to stop for a blue light and attempted murder for firing at Sergeant Knight on Highway 9 during the pursuit, Appellant claimed he did not intend to shoot at Sergeant Knight but that he was trying to "disarm" himself by "pulling [the gun] out the window" and the gun just went off. (R. p. 301). Appellant claimed he was not sure what happened but "maybe the wind caught it or something and jerked my hand." (R. p. 301, lines 23-25). He testified that, despite the

fact that he was plainly trying to escape from the police officers chasing him, he did not intend to fire at any law enforcement officer. (R. p. 302).

On cross-examination, Appellant admitted that he armed himself when he returned to his vehicle after encountering Ms. Weaver near the courthouse doors. (R. p. 309-15). He also admitted that he voluntarily stopped at the victims' car, parked beside them, and got out of his vehicle armed with his gun. (R. p. 309-16). However, Appellant was unable to answer the solicitor's question about whether he merely wanted to have a "calm conversation" with Ms. Weaver while armed with his .357 Magnum. (R. p. 311). Appellant also acknowledged on cross-examination that he never told any police officer at any point that Nikita Lockleer had supposedly been shooting at him and that he was merely returning fire in self-defense. (R. p. 321-22). The defense rested following Appellant's testimony, and after deliberating for twelve minutes, the jury returned guilty verdicts on all five counts. (R. p. 332; p. 374-76).

Appellant's Motion for Change of Venue

On October 20, 2014, Appellant's jury selection took place. After eight jurors responded to questions relating to pretrial publicity, all eight jurors affirmed that they could be fair and impartial to both the State and the defendant. (R. p. 16-33). Defense counsel was satisfied with all voir dire questions asked by the judge and had no additional questions for the judge to ask the jurors. (R. p. 32-33). Defense counsel did not propose any voir dire questions related to the fact that part of the crime took place outside of the courthouse. (R. p. 20-33). Following jury selection, the judge heard Appellant's motion for a change of venue. (See R. p. 41). The defense had filed a written motion to change the venue, along with an affidavit regarding pretrial publicity,

on June 5, 2014. (R. p. 41). Defense counsel argued that venue should be changed due to the extensive media coverage of the incident and due to the fact that "the events that the solicitor is going to relay primarily occurred right outside the courthouse door right outside where the jurors are going to be walking, taking smoke breaks, taking lunch breaks, and coming into the courthouse, leaving the courthouse, and routinely the events are going to be (sic) remind and remind, and I think that could have a severe and substantial impact on their ability to be fair and impartial to the matters that surround this case." (R. p. 41, line 15 – p. 42, line 5). Defense counsel stated that, even if the court was not inclined to move the venue to another county, he was requesting that the trial at least be moved to the magistrate courthouse, which was "less than a quarter of a mile from here right on Main." (R. p. 42, lines 6-13). He stated he believed it would be a lot more proper and fair to all sides if "the events can be something that you can relay to the court and submit to the court rather than the jurors continuing going outside and examining the evidence, the evidence themselves. (R. p. 42, lines 14-18).

The solicitor responded that, under State v. Manning, 329 S.C. 1, 495 S.E.2d 191 (1997), before a court can grant a change of venue due to pretrial publicity, there must first be an attempt to seat a jury. (R. p. 43). He stated it was obviously not impossible to obtain an impartial jury from Chesterfield County because the parties just did so. (R. p. 43). Regarding the second part of the defense motion, the solicitor stated there was no precedent for changing the location simply because the crime occurred near the courthouse. (R. p. 43-44). He also noted that the location of the courthouse was not relevant to any of the charges; in other words, the charges themselves did not arise out of the fact that the crime happened at the courthouse. (R. p. 44).

Defense counsel responded that his concern was with "the jury taking it upon themselves to go examine the scene." (R. p. 44). He stated the jurors would be walking back and forth through the "middle of the evidence," that evidentiary issues would be "thrown right in their face," and that it was just human nature for the jurors to be inquisitive and try to figure out "where those cars were parked." (R. p. 44). He stated, "[t]hose are the kinds of things I think are prejudicial to this specific case." (R. p. 45, lines 2-3). Counsel again requested that the trial be moved to the municipal courthouse down the street. (R. p. 45).

The solicitor briefly responded by pointing out that any issues with the jurors attempting to examine the evidence could be handled by the jurors being escorted by appropriate court personnel and/or by the court providing the jurors with an admonition not to conduct their own investigations. (R. p. 45, lines 10-17). He stated that between providing instructions and adding any safeguards the court might deem appropriate, the issue could be handled without the burden of physically relocating. (R. p. 45, lines 18-22).

The judge denied the motion as to the pretrial publicity issue, finding that all the jurors who responded to the questions about pretrial publicity informed the court that they could be fair and impartial. (R. p. 46, lines 2-13). As to the second part of the defense's motion, the judge stated he had never been presented with an argument regarding the location of one of the crime scenes being in close proximity to the courthouse. (R. p. 46, lines 14-19). However, he stated he was denying the motion unless the defense could present some authority for changing the location on these grounds. (R. p. 46-47). The judge noted he was not sure that changing the location to the

courthouse down the street would be of any benefit to the defense because there would be nothing stopping inquisitive jurors from "walking a little bit further" and taking a look at the scene of the alleged crime. (R. p. 46-47).

The next day, the judge allowed Appellant to revisit the venue issue, and defense counsel handed up a memorandum and case law. (R. p. 48). Counsel stated that in this case, the facts would show that a family court hearing was scheduled in the courthouse, and as Appellant was coming into "the courtroom," his baby's mother was "coming out of the courtroom" and made comments to Appellant and "immediately thereafter the victim allegedly is shot on the grounds of the courthouse." (R. p. 48-49). He argued that Appellant's case was "identical" to a Missouri case wherein a family court hearing was scheduled at the courthouse and "the husband was shot and killed, the opposing counsel as well as his wife." (R. p. 49, lines 6-7; lines 17-20). He stated that the only difference between Appellant's case and the Missouri case was that "there was no killing." (R. p. 49, lines 20-21). He stated that the Missouri defendant's motion for change of venue was denied but the Supreme Court reversed "on the basis of the proximity of the events." (R. p. 49, lines 22-24). He noted that the case to which he was referring was State v. Baumruk, 85 S.W.3d 644 (Mo. 2002). Defense counsel pointed out that the Baumruk case referenced certain constitutional protections and he then read excerpts from the case. (R. p. 50). He argued that this was not just a pretrial publicity issue, but a broader issue of "the impartiality of the adjudicator because of the environment in which the trial was held." (R. p. 50, lines 22-25). He stated that "the location of the events of this particular case occurred right where we're trying this case" and that it's all put "in the juror's face." (R. p. 51, lines 2-4). He also argued that "[i]t puts the jurors in the shoes of the victims,

alleged victims" and that Appellant can't have a fair trial in such a situation. (R. p. 51, lines 5-10).

After the judge asked for some clarification about where the actual shooting took place, the solicitor explained that the actual shooting took place "out on the street," in "the parking spaces adjacent to the street." (R. p. 51, lines 11-24). The judge noted that those parking spaces were open to the public and that parking there did not necessarily mean a person had "courthouse business." (R. p. 52, lines 9-13). The solicitor then responded to the defense's argument by arguing that the Baumruk case was distinguishable. (R. p. 53-54). He pointed out that in Appellant's case, the first shooting incident took place out on the street, and the second shooting incident took place seventeen miles from the courthouse. (R. p. 54). He also argued that Appellant's case would be different because the prosecutor in Baumruk made the courthouse building "central to their case," whereas the fact that portions of Appellant's crimes took place in the vicinity of the courthouse was not a significant aspect of this case. (R. p. 53-54). The solicitor also noted that there was no South Carolina authority supporting that a change of venue was appropriate in these circumstances. (R. p. 53). Finally, the solicitor asserted that the court could ensure that sufficient safeguards, such as appropriate jury instructions, could protect all of Appellant's rights. (R. p. 55).

Following a recess and a discussion with the lawyers in chambers, the trial judge allowed the parties to make further arguments on the issue of venue. (See R. p. 60-72). Defense counsel handed up news articles from Texas and Illinois regarding cases in which venue was transferred where the crime in question occurred at the courthouse. (R. p. 63-64). Counsel again reiterated that the incident involving Appellant took place "less

than a hundred yards from where we are standing here and now" and that some of the events occurred in the courthouse building itself or in the immediate proximity of the entry doors. (R. p. 64, lines 6-11). Defense counsel argued this was a "novel issue in South Carolina" and that we should look to the Missouri case for guidance. (R. p. 65). He also argued that jurors could not help but be "inherently prejudiced by the environment that we're in today" just like in the Missouri case. (R. p. 65).

The solicitor responded that defense counsel was not giving the jurors enough credit and that there are safeguards in place, including jury instructions, to ensure that jury verdicts are based upon the evidence presented in court. (R. p. 66-67). He also pointed out that this situation is not any different than if the crime had occurred at a convenience store two blocks from where a juror lived. (R. p. 67). The solicitor also pointed out that, although part of the crime occurred on property adjacent to the courthouse, another part of the crime took place sixteen or seventeen miles away from the courthouse. (R. p. 68). He argued that the court should not change the venue of the case because that would be saying that "a jury is too stupid to put that aside and look at the facts of the case." (R. p. 68, lines 13-17). He further argued that the true issue in the case was the defendant's intent and that the location where the crime occurred was not in dispute and was not central to the case. (R. p. 68-69). The solicitor stated that he believed the jury would be able to look at the facts of the case outside of where it happened, and that the court could provide instructions to the jurors to maintain the integrity of the case and ensure the defendant receives a fair trial. (R. p. 69). He also noted that the defendant should not benefit from the fact that he decided to commit a crime outside the courthouse, and that he should not be permitted to "use the law to

shield [him] from prosecution in the county where these victims are entitled to have venue heard." (R. p. 69-70).

The judge stated he had carefully considered everything presented on both sides. (R. p. 70, lines 9-10). He stated he had also done some research on his own "in some other jurisdictions." (R. p. 70, lines 10-11). He stated that taking everything into consideration, he did not believe the defendant would be prejudiced by having his case tried in the Chesterfield County Courthouse and did not believe the defendant's due process rights would be violated by having his case tried there. (R. p. 70, lines 11-17). Accordingly, he denied the defense's motion for a change of venue. (R. p. 70, lines 18-19). The judge noted that he would emphasize the standard instruction that the jury is only to consider the evidence produced in the courtroom, and stated he had already discussed with the lawyers that the State's witnesses, including bailiffs and law enforcement personnel who may work in the courthouse, would have no direct or indirect contact with the jury. (R. p. 71, lines 6-18). Later, in his preliminary remarks, the judge instructed the jurors as follows:

> You must decide this case based solely, 100 percent on the evidence presented here in this courtroom. This means that you can not consider anything whatsoever outside the four walls of this courtroom in reaching a decision in this case. That includes, certainly not limited to, includes your not being allowed to conduct any independent research about this case on your own, the facts in this case, the evidence presented in this case, any of the individuals involved in this case. Please do not try to find out information from any source outside the four walls of this courtroom . . . It is important to keep an open mind and not decide any issue until all of the evidence has been presented to you from the witness stand, any exhibits that may be offered into evidence, the parties have made their closing arguments to you, and I have instructed you on the law in this case. It is your solemn responsibility, Madam Forelady and ladies and gentlemen of the jury, to determine the guilt or innocence of the defendant, and your verdict must be based solely on the evidence as it is presented to you in

this trial and the four walls of this courtroom, and on the law as I instruct you at the close of this trial. (R. p. 83, line 18 – p. 84, line 20).

Defense counsel had no objection to the judge's preliminary charge. (R. p. 85, lines 19-24).

Discussion

A motion to change the venue of a trial is addressed to the sound discretion of the trial judge and will not be disturbed on appeal absent an abuse of discretion. State v. Patterson, 324 S.C. 5, 12, 482 S.E.2d 760, 763 (1997); State v. Caldwell, 300 S.C. 494, 502, 388 S.E.2d 816, 820 (1990). An abuse of discretion occurs when the judge's ruling has no evidentiary support. State v. Manning, 329 S.C. 1, 7, 495 S.E.2d 191, 194 (1997) (citation omitted).

In pretrial publicity cases, the relevant question is whether the jurors had "such fixed opinions" that they could not impartially judge the guilt of the defendant. State v. Tucker, 324 S.C. 155, 166, 478 S.E.2d 260, 266 (1996) (citation omitted). In other words, if jurors are found to have the ability to lay aside any impressions or opinions and render a verdict based on the evidence presented at trial, it is not an abuse of discretion to deny a motion to change venue. State v. Ayers, 284 S.C. 266, 268, 325 S.E.2d 579, 580 (Ct. App. 1985). In these types of cases, the moving party has the burden to show "actual juror prejudice" as a result of the pretrial publicity. Caldwell, 300 S.C. at 502, 388 S.E.2d at 821.

This issue being appealed in this case is not a pretrial publicity issue; however, the pretrial publicity cases are instructive because they illustrate that the primary concern with regard to venue is whether jurors can be fair and impartial – that is, whether they can lay aside any impressions they may have about the case and render a verdict solely based

upon the evidence presented in the courtroom. This is a question which must be answered on a case-by-case basis, based on an evaluation of the individual circumstances present, and reviewed using an abuse of discretion standard. In this case, the trial judge did not abuse his discretion by denying Appellant's motion to change venue because Appellant failed to show the jurors could not be fair and impartial as a result of the trial's location.

Initially, the State disagrees with Appellant's assertion that there was "inherent" prejudice as a result of trying the case in the Chesterfield County Courthouse. (See Brief of Appellant, p. 7-9). As mentioned previously, all of the jurors affirmed during voir dire that they could be fair and impartial. Furthermore, there was nothing prejudicial about trying the case in the Chesterfield County Courthouse under the particular circumstances of this case. The shooting of Ms. Weaver and Mr. Nolan occurred not inside the courthouse, but outside in the public parking spaces on Main Street. (R. p. 96-97; p. 122). The other half of the crime – the failure to stop for a blue light and the attempted murder of Sergeant Knight – occurred on the highway out of town, several miles from the courthouse. (R. p. 152-59; p. 177). Significantly, neither victim died as a result of Appellant's attack, so the jurors were **not** trying the case at the scene of a tragic murder like in State v. Baumruk, 85 S.W.3d 644 (Mo. 2002). There was nothing about the courthouse location that would prejudice the jury against the defendant or place the jurors in the "shoes" of the victims as opposed to the shoes of the defendant. (See Brief of Appellant, p. 10).

Moreover, simply being in proximity to where part of the crime occurred told the jurors nothing that they could not have learned from the photographs of the scene that the

State introduced without objection.[1] (See R. p. 75-76; see State's Exhibits # 21-60, Photos). In other words, the disputed issue in this case – Appellant's state of mind at the time of the shootings – was not affected by holding the trial in close proximity to where a portion of the crimes occurred.[2] Finally, Appellant's concern about the jurors conducting their own improper investigations is unfounded because the judge instructed the jurors in no uncertain terms that they were to decide the case based "solely, 100 percent" on the evidence presented in the courtroom and that they were not to conduct their own investigation of the scene. (R. p. 83, line 18 – p. 84, line 20). It is presumed that jurors follow instructions provided by a trial judge. See, e.g., State v. Grovenstein, 335 S.C. 347, 353, 517 S.E.2d 216, 219 (1999) (jurors are presumed to follow the law as instructed to them).

The Baumruk case – the Missouri case upon which Appellant relies – is totally distinguishable for many reasons and does not support Appellant's claim for relief. First, in Baumruk, the defendant killed his wife, and then shot six more people, *inside* the courthouse in a family court courtroom similar to the one in which the defendant was

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[1] Notably, Appellant made no suggestion that the photographs introduced by the State did not accurately represent the scene at the courthouse. Appellant also did not dispute any of the testimony presented regarding the scene. (See R. p. 89-90; p. 105-112; p. 116-17; p. 128-31; p. 138-40; p. 148-50; p. 238-39; p. 335-42). Appellant's cross-examination of Ms. Weaver and Mr. Nolan, the two courthouse victims, focused on trying to paint them as marijuana users. (See R. p. 105-12; p. 116-17; p. 128-31). Nothing about the physical location was disputed by Appellant at trial.

[2] It is hardly unusual, particularly in a small county, that jurors might be familiar with the location in which a crime occurs. The fact that a crime occurs on Main Street in a small town – an area with which jurors are invariably familiar – does not automatically prejudice a jury panel against a defendant. Instead, in the State's view, the defendant must demonstrate there is a special reason why familiarity with, or proximity to, the scene of the crime would taint the jurors to the extent they could not possibly be fair and impartial. Notably, South Carolina law allows for a jury view of the scene under certain circumstances, so it is clear that jurors simply having access to the scene does not result in *per se* prejudice to either party. See S.C. Code § 14-7-1320 ("The jury in any case may, at the request of either party, be taken to view the place or premises in question or any property, matter or thing relating to the controversy between the parties when it appears to the court that such view is necessary to a just decision . . . ."). In that vein, a jury view of the scene is not even classified as "evidence" in a trial. See, e.g., Gossett v. State, 300 S.C. 473, 477, 388 S.E.2d 804, 806 (1990) ("Viewing the premises is not regarded as taking evidence."). Instead, a jury view's purpose is simply to enable the jurors to better understand the evidence already presented at trial. State v. Mouzon, 326 S.C. 199, 203, 485 S.E.2d 918, 921 (1997).

later tried. State v. Baumruk, 85 S.W.3d 644, 646-47 (Mo. 2002). Media coverage of the incident was "massive" and the reporters described the event as a "shooting spree" and a "rampage." Id. at 647. Following the incident, the courthouse upped its security by doubling the number of security guards and installing metal detectors. Id. Six years after the shootings, a poll conducted by a political scientist found that about 70% of county residents remembered the incident and over 80% of those people said the defendant was "definitely guilty" and 18% said he was "probably guilty." Id. at 649. Further, sixty-three of the ninety-nine people who appeared for jury service admitted they had heard about the case in the media; eight of the twelve jurors who ultimately sat on the defendant's jury said they remembered the incident; and one of these jurors acknowledged he believed the defendant was guilty based on the media reports. Id.

The Baumruk court held that "*the circumstances of this trial*, held where the shootings occurred, are inherently prejudicial and denied Baumruk his right to a fair trial under the 6th and 14th Amendments."[3] Id. (emphasis added). This was because the courtroom in which the case was being tried was the same as the crime scene; the building in which the jurors entered every day of trial was the scene of the "terrifying events;" the prosecutor emphasized the fact that the crime occurred "in this courthouse," jurors entered the courthouse and went through the metal detectors that had been installed as a direct result of the defendant's shooting spree; and jurors used the same halls, elevators, and stairwells as the "escaping victims." Id. at 650. The court found that "[t]he association between the jurors and the crime scene in this case created a prejudicial environment which undermines the basic guarantee of trial by jury." Id. The court also

[3] Baumruk was re-tried in 2007 and was again found guilty and sentenced to death. He subsequently died in prison of natural causes in 2012 before he could be executed. See http://www.cbsnews.com/news/shooter-in-mo-courthouse-killing-dies-in-prison/.

found it was not possible to assure that Baumruk received a fair and impartial trial because "the jurors were influenced by pretrial publicity *and* by the atmosphere of the trial setting." Id. at 651 (emphasis added).

The court was careful to point out, however, that Baumruk's case was a "unique case" and that "[r]arely if ever is a trial court's refusal to grant a change of venue disturbed on appeal because of the broad discretion given to trial court judges to make the determination as to whether or not a fair trial is possible in the county." Id. at 646 & 651. Significantly, the court also limited its holding as follows: "This case does not stand for the proposition that venue is improper in *any* case where the crime was committed in the courthouse – only when circumstances surrounding that crime create a prejudicial atmosphere and there is extensive pre-trial publicity." Id. at 653 n9 (italics in original). Note also that three dissenting judges would have held that the passage of time allowed a fair trial in St. Louis County, that no juror would have felt like he or she was in the shoes of the victims, and that there was no "inherent" prejudice.[4] Id. at 652-53.

While the events that took place on Main Street in Chesterfield County on February 13, 2013, were certainly traumatic for the victims and should not be diminished, they were a far cry from the "rampage" in Baumruk where the defendant killed his wife and then shot at multiple, random people inside the courthouse building. Again, the shooting of Ms. Weaver and Mr. Nolan took place outside in the parking spaces on Main Street, and neither victim died. The other half of the crime took place miles away from the courthouse on Highway 9. Further, while there was certainly media coverage of the incident, only eight members of the jury panel were exposed to pretrial publicity or prior

[4] There are seven judges who sit on Missouri's Supreme Court. The only judge referred to as "justice" is the chief justice of the Supreme Court.

knowledge of the events, and all of these jurors affirmed that they could be fair and impartial to both parties despite such exposure. (R. p. 16-32). Considering the circumstances present in Appellant's case, the trial judge did not abuse his discretion by denying Appellant's motion to change venue.[5] Appellant received a trial by fair and impartial jurors, and his convictions should be affirmed.

Overwhelming Evidence of Guilt

Regardless of venue, Appellant's convictions should still be affirmed because there was overwhelming evidence of his guilt such that any jury sitting in *any courthouse in South Carolina* could have reached no verdict other than guilty. The only prejudice "inherent" in Appellant's case was the fact that he committed the crimes in such a blatant fashion – thus creating irrefutable evidence against himself – such that it would impossible for any juror anywhere to find him not guilty. If there *was* any prejudice resulting from trying the case at the Chesterfield County Courthouse – which the State vigorously disputes – it was greatly overshadowed by the "prejudice" naturally flowing from the overwhelming evidence against Appellant. Appellant had a full opportunity to challenge the State's case and present his defense, and he did so. In the State's view, this Court can review the trial record from an objective perspective and easily ascertain that the evidence was overwhelming such that, regardless of where the trial was held, any twelve jurors would have been required, under their oaths, to convict Appellant. See Snyder v. Massachusetts, 291 U.S. 97, 122 (1934) (Justice Cardozo, speaking for the

[5] At trial, the judge pointed out that only two of the attempted murder charges occurred in proximity to the courthouse and indicated he was assuming defense counsel's motion to change venue pertained only to those charges. (R. p. 55-56). Defense counsel did not object or attempt to clarify the judge's understanding on this point; therefore, it is now the law of the case that the motion to change venue pertained only to the attempted murder charges regarding Ms. Weaver and Mr. Nolan. Accordingly, even if this Court were to conclude that Appellant's issue was meritorious and he was entitled to relief, his convictions and sentences on the remaining three charges should remain undisturbed.

Court, held as follows: "[J]ustice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true . . . There is danger that the criminal law will be brought into contempt - that discredit will even touch the great immunities assured by the Fourteenth Amendment - if gossamer possibilities of prejudice to a defendant are to nullify a sentence pronounced by a court of competent jurisdiction in obedience to local law, and set the guilty free."), *overruled in part on other grounds by* Malloy v. Hogan, 378 U.S. 1 (1964); United States v. Mechanik, 475 U.S. 66, 72 (1986) ("The reversal of a conviction entails substantial social costs: it forces jurors, witnesses, courts, the prosecution, and the defendants to expend further time, energy, and other resources to repeat a trial that has already once taken place; victims may be asked to relive their disturbing experiences. . . . These societal costs of reversal and retrial are an acceptable and often necessary consequence when an error in the first proceeding has deprived a defendant of a fair determination of the issue of guilt or innocence. But the balance of interest tips decidedly the other way when an error has had no effect on the outcome of the trial." (citations omitted)); Calderon v. California, 525 U.S. 141, 146 (1998) ("The social costs of retrial or resentencing are significant. . . . The State is not to be put to this arduous task based on mere speculation that the defendant was prejudiced by trial error; the court must find that the defendant was actually prejudiced by the error." (citations omitted)). Accordingly, Appellant's convictions should be affirmed.

CONCLUSION

For the reasons discussed above, the State requests that this Court affirm Appellant's convictions and sentences.

Respectfully submitted,

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October 29, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chesterfield County
Donald B. Hocker, Circuit Court Judge
Appellate Case No. 2014-002322

THE STATE OF SOUTH CAROLINA,

Respondent,

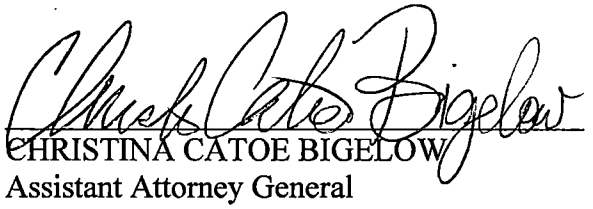
v.

CURTIS BRENT GORNY,

Appellant.

PROOF OF SERVICE

The undersigned attorney hereby certifies that the **Initial Brief of Respondent** and **Designation of Matter** in the above-referenced case has been served upon **M.W. Cockrell, III**, 159 Main Street, Chesterfield, South Carolina, 29709, this **29th** day of **October, 2015.**



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