

STATE OF SOUTH CAROLINA

 ORIGINAL

IN THE COURT OF APPEALS

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Appeal from Marlboro County

**RECEIVED**

Honorable Michael G. Nettles, Circuit Court Judge

APR 07 2017

THE STATE,

SC Court of Appeals

RESPONDENT,

V.

TYRONE QUICK,

APPELLANT

APPELLATE CASE NO. 2016-000540

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INITIAL BRIEF OF APPELLANT  
\_\_\_\_\_

ROBERT M. DUDEK  
Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

Whether the court erred by refusing to direct a verdict of acquittal on the charge on murder where the evidence only raised a suspicion appellant shot the decedent, and the only direct evidence was the assertion by appellant's girlfriend that appellant said he shot the decedent during a fight which constituted direct evidence of voluntary manslaughter, but not of the malice aforethought necessary for murder, and the court also applied an incorrect "scintilla of evidence" rather than the proper substantial circumstantial evidence standard?

## STATEMENT OF THE CASE

Appellant was indicted by the Marlboro County grand jury for the offense of murder. His case is called to trial on February 29, 2016, before the Honorable Michael G. Nettles, and a jury. Kyle Hobbs and Trevor Threet represented appellant. Kernard Redmond and Elizabeth Munnerlyn were the assistant solicitors. Tr. 1.

On March 1, 2016, the jury found appellant guilty of murder after the judge charged murder, voluntary manslaughter, and self-defense. Tr. 407, l. 7 – 409, l. 16; Tr. 414, ll. 5-7. Judge Nettles sentenced appellant to thirty years imprisonment. Tr. 424, ll.7-11.

This appeal follows.

## ARGUMENT

The court erred by refusing to direct a verdict of acquittal on the charge on murder where the evidence only raised a suspicion appellant shot the decedent, and the only direct evidence was the assertion by appellant's girlfriend that appellant said he shot the decedent during a fight which constituted direct evidence of voluntary manslaughter, but not of the malice aforethought necessary for murder, and the court also applied an incorrect "scintilla of evidence" rather than the proper substantial circumstantial evidence standard.

The fight between the decedent and appellant in this case occurred on December 15, 2015, in Bennettsville, South Carolina when several men -- including appellant and the decedent -- were playing cards at about 10 o'clock at night. Jacobie Samuel was the nephew of the decedent. Appellant was his first cousin. Tr. 280, l. 2- 281, l. 21. As will be seen infra, there was evidence the men present that night generally had known each other all of their lives in this small community. However, that evening, there was evidence appellant and the decedent fought inside the mobile home, and then outside the mobile home. What happened during the card game was still unclear even after all of the evidence was presented. Nonetheless, there was evidence when the fight was over that appellant helped the other men look for the decedent's lost or dropped key to the moped he was driving that night.

### **Relevant Facts**

Samuel remembered that many people were standing around drinking, talking and generally having a good time when appellant and the decedent got into a fight inside the mobile home. They were "tussling, wrestling." Tr. 282, ll. 9-22. The decedent ended up "on top of Tyrone." Tr. 283, ll. 6-10. A couple of the other men broke up the fight, and the decedent and appellant went outside. Tr. 282, ll. 11-22.

When they were outside the mobile home Samuel remembered he heard the moped that the decedent was driving fall to the ground. He looked outside, and he saw appellant and the decedent fighting again “on top of the moped.” Tr. 284, ll. 7-23. Samuel said his cousin, Derrick Deese, said to appellant and the decedent: “I’m talking to two grown men. If y’all want to fight, y’all go on and fight. So [But], they didn’t fight.” Tr. 285, ll. 6-18.

Samuel recalled that several of the men were helping the decedent look for the lost key to his moped. “So, twenty minutes later somebody came around the house shooting, basically.” Tr. 288, ll.1-25. Samuel did not see the shooting, and he ran when he heard the gunshots. Tr. 289, l. 1 – 294, l. 4.

Similarly, Derrick Deese remembered the decedent and appellant fighting that night. When the fight was over, Deese remembered that appellant was helping the other men look for the decedent’s key to the moped. Tr. 296, l. 20 – 299, l. 23. Deese also did not see who the shooter was that evening, and he also ran when he heard gunshots. Tr. 302, l. 2 – 303, l. 25.

Mark Ridges was also at the mobile home where the fight occurred that evening. Ridges said that a gold car picked appellant up from the scene of the fight. Ridges said appellant returned “ten or fifteen minutes [later] tops.” Tr. 264, l. 10- 265, l. 25.

Ridges testified that appellant came walking down a dirt road after being dropped off, and he walked by the other men without saying “nothing to nobody.” Tr. 266, l. 7 – 267, l. 13. Ridges said: “I just heard gunshots and I took off running.” Tr. 267, ll. 11-13. Ridges remembered seeing the decedent lying on the ground “over there by Jimmy’s house.” Tr. 268, ll. 1-6.

The decedent had been shot four times. The solicitor stipulated that DNA evidence was “taken to SLED *but it was not tested.*” Tr. 167, l. 20 – 168, l. 3; 193, l. 4 – 195, l. 16. (emphasis

added). The decedent had a blood alcohol reading of 0.133, and he had THC in his system. Tr. 208, ll. 3-17.

Maggie Littlejohn was appellant's girlfriend at the time of the December 15, 2011, incident. Tr. 307, ll. 11-19: Littlejohn remembered that appellant telephoned her at nine-thirty or ten o'clock to come pick him up from the mobile home where he was playing cards. Littlejohn had a "gold Malibu, 2006." Tr. 307, l. 20 – 309, l. 15.

Littlejohn picked appellant up, and she drove through the "by-pass" to a club called the "High Cotton." Tr. 309, ll. 22-25. Unfortunately, the club was closed. Tr. 310, ll. 5-18.

Littlejohn said appellant then asked her to go back to the mobile home where he had been playing cards to "get his jacket." Tr. 310, ll. 19-21. When she dropped appellant off, appellant told her: "I'll call you when I get ready." Tr. 311, l. 4 – 312, l. 1.

Littlejohn testified that about thirty minutes later appellant called, and asked her to pick him up on Munnerlyn Street near the mobile home. Littlejohn remembered: "When I went to pick him back up, there was a lot of commotion going on and I seen (sic) a lot of dust. I seen a lot of people standing around. So I asked him, I said, what's -- I said, what's going on?" Tr. 312, ll. 2-22.

Appellant told Littlejohn there had been fighting at the mobile home, and that there had been a shooting. Appellant told her: "I don't know what's going on ... Let's go, go, go." Tr. 313, ll. 2-7. Littlejohn said they had planned to go to a club in Dillon that night before whatever happened at the mobile home occurred. Littlejohn started driving towards the club in Dillon when she claimed appellant said: "I shot Tony and I said, you shot Tony? Well, he said, I shot Tony McLaurin and I say, why? He say (sic), *cause me and him was fighting.*" Tr. 313, l. 17-22. (emphasis added).

Littlejohn claimed she was in shock and scared when appellant allegedly said he shot Tony. "Then he tried to recant his story and say that no, he didn't shot him. But at that time, he had done told me that he did." Tr. 314, ll. 16-22.

Littlejohn testified that they then went to the club in Dillon but that she claimed she remained in shock. She maintained she really did not feel like dancing with appellant at the club. They left the club after thirty to forty minutes, and Littlejohn said appellant asked: "Will you do me a favor? He say (sic), I'm going to turn myself in, I want you to drop me off in McCall." Tr. 315, l. 9 – 316, l. 1.

Littlejohn said she dropped appellant off somewhere in McCall in front of a store. The following day, two detectives came to her house in Bennettsville. Littlejohn maintained at trial that she was lying when she told the police she did not have any helpful information for them. Tr. 318, l. 3 – 319, l. 21.

Littlejohn admitted when the police came to talk to her again eleven days later, on December 27, 2011, that she was threatened with criminal charges "if you don't cooperate." Tr. 327, l. 10 – 330, l. 8. Even though at least one eyewitness said the shooter was wearing a hoodie that night, Littlejohn testified that she did not remember appellant wearing a hoodie. Tr. 330, ll. 9-13. Littlejohn admitted on cross-examination that she did not come forward and "change her story" until eleven days later when the police talked to her, and threatened her. Tr. 336, ll. 6-21.

### **Directed verdict motion**

Defense counsel moved for a directed verdict. Counsel argued the state's evidence placed appellant in the area of the shooting. However, not a single witness claimed to have seen appellant shoot the decedent. Counsel also noted that Littlejohn's statements were inconsistent,

that she was threatened, and her testimony alone was insufficient to take the case to the jury on the charge of murder. Tr. 343, l. 8- 346, l. 11. The judge said the state had put forth at least “a scintilla of evidence that this crime did take place and that’s the only standard there to meet.” Tr. 345, l. 25 – 346, l. 11.

### **Discussion**

None of the eyewitnesses claimed to have seen appellant shoot the decedent. The best evidence the state could offer only raised a suspicion of appellant’s guilt. Appellant came back into the area, and there was a shooting. The witnesses scattered, and this evidence was not substantial circumstantial evidence of appellant’s guilt of the crime of murder. It was only evidence which raised a suspicion of appellant’s guilt, and a directed verdict is proper when the evidence produced “merely raises a suspicion the accused is guilty.” Lollis, 343 S.C. at 584, 541 S.E.2d at 256; State v. Arnold, 361 S.C. 386, 389-390, 605 S.E.2d 529, 531 (2004); State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 451-452 (1984); State v. Muhammed, 338 S.C. 22, 524 S.E.2d 637 (Ct. App. 1999). Our courts define suspicion as “a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof.” Lollis, 343 S.C. at 584, 541 S.E.2d at 256; State v. Hyder, 242 S.C. 372, 131 S.E.2d 96 (1963).

Littlejohn claimed appellant told her that he shot the decedent because they were fighting. Appellant concedes this testimony would have been sufficient to have the crime of voluntary manslaughter taken to the jury, and the judge charged voluntary manslaughter. However, standing alone, which it did as direct evidence, it was not direct evidence that appellant killed the decedent with the malice aforethought necessary for murder. Even if Littlejohn’s claim that appellant admitted shooting the decedent because of a fight with him was considered with the other circumstantial evidence, it all did not constitute substantial circumstantial evidence of

appellant's guilt. State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001); State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000); State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000). State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011); State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000).

The state's theory of the case was that appellant got into a fight with the decedent, and he left to get a gun. He returned "ten minutes later, tops," and shot the decedent to death in anger. The judge correctly reasoned that any "cooling time" consideration regarding voluntary manslaughter was a matter the solicitor could argue to the jury in closing but that voluntary manslaughter was a jury verdict option.

The trial judge, as seen, said that all he was concerned with was there being "a scintilla of evidence that this crime did take place and that's the only standard there to meet." Tr. 345, l. 25 – 346, l. 11. Again, if this was a voluntary manslaughter indictment the judge may have been correct given Littlejohn's claim. However, there was not direct or *substantial circumstantial evidence* here that appellant killed the decedent with the malice aforethought necessary for murder. The judge abused his discretion by applying the incorrect standard when determining if appellant was entitled to a directed verdict. The proper standard was any direct evidence of murder, or any substantial circumstantial evidence of murder – malice aforethought. See State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011); State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000), on the correct standard.

In Mitchell, 341 S.C. at 409, 535 S.E.2d at 127, the Supreme Court held the lower court erred in failing to direct a verdict where the only evidence presented against the defendant was his fingerprint at the scene of the burglary. Likewise, the Lollis Court directed a verdict of acquittal in the defendant's favor where the state presented no direct evidence that Lollis was involved in setting

fire to his home. The only circumstantial evidence against Lollis was that his wife admitted to the arson, he had placed valuables in storage prior to the fire, he possessed a key to the storage unit, and he allegedly had financial troubles. This Court found this evidence insufficient. Lollis, 343 S.C. at 584-585, 541 S.E.2d at 256-257.

In State v. Odems, 395 S.C 582, 720 S.E.2d 48 (2012), the Supreme Court held the defendant was entitled to a directed verdict based upon a lack of substantial circumstantial evidence that the defendant was involved in the burglary. Although Odems was in a car with other individuals who admittedly burglarized a home, with the stolen goods, and he fled when the police stopped the car, and he asked a woman to lie to the police for him, the Court held the state failed to provide substantial circumstantial evidence that Odems was present during the home invasion. The witness who saw individuals at the home claimed she saw two, not three as were found in the car. Fingerprints collected from the stolen goods did not match Odems, but matched the other individuals in the car. Id. at 588, 720 S.E.2d at 51.

In State v. Bostick, 392 S.C. 134, 141, 708 S.E.2d 774, 778 (2011), the Supreme Court held the prosecution failed to present substantial circumstantial evidence of Bostick's guilt. Rather, the state's evidence was capable of producing only a suspicion of Bostick's guilt. Id. Although the police found items belonging to the victim in a burn pile behind the home of Bostick's mother, this Court held no evidence linked Bostick to the evidence in the burn pile and the prosecution presented no testimony that Bostick had control over the burn pile. Id. at 137-141, 708 S.E.2d at 775-778. The only other evidence presented against Bostick was that he had a chemical pattern that matched gasoline on his shoes and gasoline was used to start the fire at the victim's home, and DNA from blood on Bostick's jeans excluded ninety-nine percent of the population, but the expert could not testify the DNA matched the victim. Bostick's mother said she never used gasoline in the burn pile

but the victim's unwanted stolen property was burned with gasoline. The Court held this did not amount to substantial circumstantial evidence. Id. at 142, 708 S.E.2d at 778.

Here, none of the witnesses testified that appellant was the shooter. Littlejohn's statement claiming appellant admitted shooting the decedent because they fought was not direct evidence of murder (malice aforethought) but of voluntary manslaughter (killing without malice). Getting hit in a fight is evidence of voluntary manslaughter because it classically leads to the conclusion of a sufficient legal provocation, and the heat of passion necessary for voluntary manslaughter. "Cooling time" was correctly a jury issue here. State v. Lowry, 315 S.C. 396, 434 S.E.2d 272 (1993).

Based on the evidence presented, the judge abused his discretion by not directing a verdict on the murder charge, and only submitting voluntary manslaughter to the jury.

**CONCLUSION**

By reason of the forgoing argument, appellant's conviction should be vacated, and an order of acquittal issued by this Court.



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Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of April, 2017.