ORIGINAL

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Marlboro County
Michael G. Nettles, Circuit Court Judge

THE STATE,

Respondent,

v.

TYRONE QUICK,

Appellant.

Appellate Case No. 2016-000540

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

SHERRIE BUTTERBAUGH
Assistant Attorney General
S.C. Bar No. 101477
P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

WILLIAM B. ROGERS, JR.
Solicitor, Fourth Judicial Circuit
P.O. Box 616
Bennettsville, South Carolina 29512
(843) 479-6516

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

Whether the court erred by refusing to direct a verdict of acquittal on the charge of 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?

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

The argument that the trial court used the wrong standard when ruling on appellant's directed verdict motion is not preserved for review, regardless, the court did not err in denying the motion where, viewing the evidence in the light most favorable to the State, there was both direct and substantial circumstantial evidence presented which reasonably tended to prove appellant shot the victim at least four times with the malice necessary to convict appellant of murder.

STATEMENT OF THE CASE

A Marlboro County grand jury indicted appellant, Tyrone Quick, for murder. (R.pp.274-75). Appellant proceeded to trial on February 29, 2016, and was represented by Kyle M. Hobbs and Trevor Threet. (R.p.1). Kernard E. Redmond and Elizabeth R. Munnerlyn of the Fourth Circuit Solicitor's Office represented the State. (R.p.1).

On March 2, 2016, the jury found appellant guilty. (R.p.272, lines 5-8). The Honorable Michael G. Nettles sentenced appellant to thirty years' imprisonment. (R.p.273, lines 7-11).

This appeal follows.

STATEMENT OF FACTS

Despite the attempts to break up a fight between a nephew and his uncle, no one could stop the ultimately deadly confrontation. Appellant was with friends and family members at a home on Amelia Street in Bennettsville on the night of December 15, 2011, when he and his uncle got into an argument. (R.p.149, lines 2-18; p.150, lines 6-24; p.151, lines 9-25). Witnesses testified they were not sure what started the argument between appellant and Patrick "Tony" McLaurin, the victim. (R.p.166, line 19-p.167, line 6). Jacobie Samuel (Samuel) and Derrick Dease (Dease) testified they tried to break it up, but appellant and the victim went outside and continued to fight. (R.p.152, line 11-p.153, line 6; p.167, line 13-p.168, line 12). Samuel testified the victim told appellant he did not want to fight. (R.p.152, lines 13-15). Samuel saw both men outside on the ground locked together. (R.p.153, line 11-p.154, line 5). Dease testified he helped break up the fight again and Samuel stated appellant and the victim continued to argue, although they stopped trying to fight. (R.p.154, lines 6-22; p.168, lines 13-18).

Dease, Samuel, and a third man testified about the moments leading up to the deadly shooting. Mark Ridges (Ridges) arrived at the house at about ten o'clock that night and after the fight. (R.p.129, lines 20-25). Ridges testified he had known both appellant and the victim for thirty-five or forty years. (R.p.129, lines 3-20). Ridges was outside in front of the home on Amelia Street and saw a gold car pull up down the street, appellant get inside, and leave. (R.p.130, line 24-p.131, line 4; p.132, line 12-p.134, line 19). Ridges testified appellant was gone for about ten or fifteen minutes then he returned, and Ridges saw appellant walking back toward them from Hudson Street. (R.p.134, line 22-p.135, line 6). Ridges testified appellant did not talk to anyone, walked past the group in the front of the house, around the side of the house,

and to the back where the victim was standing. (R.p.135, line 7-p.136, line 10). Ridges testified he heard gunshots as soon as appellant walked around to the back of the house and Ridges took off running. (R.p.136, lines 11-17).

Dease testified appellant left after the fight broke up, but he did not recall when appellant returned to the home on Amelia Street. (R.p.169, lines 15-25). Dease was in the backyard in a group of four men, including the victim, when someone started shooting at them. (R.p.170, lines 1-21). Dease testified the shots came from his right, from the direction of Hudson Street, and he ran. (R.p.170, line 22-p.171, line 11). Dease admitted he did not see who fired the gun. (R.p.171, lines 12-14).

Samuel was with the group that included Dease and the victim, and testified he saw someone come around the house and shoot toward them. (R.p.157, lines 1-7; p.157, line 17-p.160, line 4). Samuel admitted he could not see the shooter's face. (R.p.163, lines 22-23). Samuel took off running, heard someone scream "he's shot," and heard someone say "oh, no, Tony." (R.p.160, lines 7-8; p.160, line 22-p.161, line 2).

Maggie Littlejohn (Littlejohn) was appellant's girlfriend. (R.p.176, lines 4-14). She testified appellant called her to pick him up at about ten o'clock on the night of the shooting. (R.p.176, line 20-p.177, line 10). Littlejohn drove a gold Chevrolet Malibu. (R.p.177, lines 16-20). Littlejohn picked up appellant and the two drove to a bar which was closed, so she took him back toward Amelia Street. (R.p.178, line 22-p.179, line 21). Littlejohn testified she dropped appellant off on Hudson Street and appellant told her he would call her later to pick him up. (R.p.180, lines 4-11, p.180, line 21-p.181, line 1). After about thirty minutes, appellant called Littlejohn and asked her to pick him up near the scene of the murder. (R.p.181, line 2-p.182, line 1). Littlejohn arrived, noticed a commotion, but when she asked appellant about it, he said there

had been a fight, did not mention his involvement, and told her to drive to a club in Dillon. (R.p.182, lines 2-16). Littlejohn testified she asked appellant again about the commotion and appellant finally admitted:

> [T]hat's when he said, I shot Tony and I said, you shot Tony? Well, he said, I shot Tony McLaurin and I say, why? He say, cause me and him was fighting.

(R.p.182, lines 17-22). Littlejohn said she was "in shock, scared, and afraid," she told appellant she would have to turn him in, and he immediately "tried to recant his story and say that no, he didn't shoot him." (R.p.183, lines 16-21). Littlejohn testified she and appellant drove to Dillon, but she remained in shock. (R.p.183, line 22-p.184, line 19). Littlejohn and appellant left the club and appellant told Littlejohn he was going to turn himself in to police, but to drop him off first in a small town near Bennettsville. (R.p.184, line 20-p.185, line 1; p.187, lines 5-9). Littlejohn left appellant and drove home. (R.p.187, lines 10-11).

The pathologist testified the victim was shot four times and possibly grazed a fifth time. (R.p.72, lines 9-14). The victim was shot once in the neck, twice in the back, and once in the chest.[1] (R.p.74, lines 4-6; p.75, lines 7-18; p.77, lines 22-25). However, there were no cartridge casings found at the scene. (R.p.50, lines 6-8). The State's firearms expert explained the victim was shot with a .32 caliber revolver handgun. (R.p.102, lines 15-17; p.103, line 21-p.104, line 4; p.106, lines 12-25; p.108, lines 7-11). Such guns do not generally eject cartridge casings after firing. (R.p.108, line 18-p.109, line 7). The casings remain in the revolver unless the shooter empties it. (R.p.109, lines 13-19).

Sergeant John Hepburn (Hepburn) testified he interviewed witnesses more than once who were at the scene, and they gave consistent stories each time. (R.p.25, line 18-23; p.29, line 14-

[1] The pathologist also noted injuries consistent with a fight, including a bruise near the victim's left eye and scrapes on his arms and hand. (R.p.85, line 15-p.86, line 7).

p.30, line 1; p.30, line 21-p.31, line 7). Based on those interviews, Hepburn got an arrest warrant for appellant. (R.p.26, line 14-p.28, line 1). Hepburn testified police charged appellant with murder, in part, because witnesses told him appellant left the home following the fight but returned to later to shoot the victim. (R.p.65, lines 5-12). Appellant turned himself in the day after the deadly shooting. (R.p.29, line 14-16).

The trial court instructed the jury on murder, voluntary manslaughter, and self-defense. (R.p.253, line 17-p.269, line 4).

ARGUMENT

> The argument that the trial court used the wrong standard when ruling on appellant's directed verdict motion is not preserved for review, regardless, the court did not err in denying the motion where, viewing the evidence in the light most favorable to the State, there was both direct and substantial circumstantial evidence presented which reasonably tended to prove appellant shot the victim at least four times with the malice necessary to convict appellant of murder.

The argument that the trial court used the incorrect "scintilla of evidence" standard when ruling on appellant's directed verdict motion is not preserved for appellate review because defense counsel never objected to the standard at trial. Regardless, the trial court did not abuse its discretion in denying the motion where the record demonstrates the State presented both direct and substantial circumstantial evidence which reasonably tended to prove appellant was guilty of murder. The evidence presented included testimony that appellant admitted to his girlfriend he shot the victim, and testimony from multiple witnesses about appellant's behavior in the moments leading up to the deadly shooting. Further, the jury resolved any conflicts in the testimony and drew reasonable inferences from the facts presented to find the State proved beyond a reasonable doubt all essential elements of the crime, including malice.

Directed Verdict Motion at Trial

Following the end of the State's case, defense counsel moved for a directed verdict, arguing the State failed to present "any competent evidence" to convict appellant of murder because no one saw appellant shoot the victim. (R.p.212, lines 8-10; p.212, lines 17-23). Counsel asserted only Maggie Littlejohn's (Littlejohn) testimony directly connected appellant to the shooting, and her statements were inconsistent and made only after the threat of prosecution.[2]

[2] Littlejohn admitted during both direct and cross-examinations that she was not truthful when she initially spoke to police, but stated she did so because she was scared and "in shock."

(R.p.212, line 23-p.213, line 14).

The solicitor argued, viewing the evidence in the light most favorable to the State, he had presented direct evidence through the testimony of Littlejohn and substantial circumstantial evidence through the testimony of other witnesses at the scene sufficient to submit the case to the jury. (R.p.214, lines 1-13).

The trial court ruled the State had "at least proved by a scintilla of evidence" that the crime took place and that was "the only standard" to meet. (R.p.214, line 25-p.215, line 3). The court noted any inconsistencies in the witnesses' testimony were questions of fact for the jury to decide and denied the motion for a directed verdict. (R.p.215, lines 3-11).

Defense counsel did not object to the ruling.

Standard of Review

On appeal from the denial of a directed verdict, appellate courts view "the evidence and all reasonable inferences in the light most favorable to the State." *State v. Pearson*, 415 S.C. 463, 470, 783 S.E.2d 802, 806 (2016) (citing *State v. Butler*, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014)). If the State presented any direct evidence or any substantial circumstantial evidence reasonably tending to prove the defendant's guilt, the appellate courts must affirm the trial court's decision to submit the case to the jury. *State v. Hepburn*, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013) (quoting *State v. Cherry*, 361 S.C. 588, 593-94, 606 S.E.2d 475, 478 (2004)).

Analysis

Appellant's Argument is Not Preserved

To begin, it appears the argument that the trial court used the wrong standard when ruling

---

(R.p.188, lines 1-21; p.203, line 21-p.204, line 8). Further, Littlejohn testified police told her she could face possible charges in connection with the shooting. (R.p.197, lines 2-5).

on the directed verdict motion is not preserved for appellate review. To properly preserve an issue, there must be a contemporaneous objection ruled on by the trial court. *State v. Johnson*, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005); *see also State v. Stahlnecker*, 386 S.C. 609, 617, 690 S.E.2d 565, 570 (2010) ("An objection must be made on a specific ground.").

Here, the solicitor indicated the State presented both direct and substantial circumstantial evidence, correctly stating the standard. The trial court then noted the State met its "scintilla of evidence" standard and denied the motion. However, defense counsel never objected to the court's stated standard or asked for any clarification on the record. *See Johnson*, 363 S.C. at 58, 609 S.E.2d at 523 (holding there must be a contemporaneous objection made and ruled on by the trial court to preserve an issue for appellate review). Accordingly, any argument that the court used the incorrect standard when denying appellant's motion for a directed verdict is not preserved for this Court's review.

The State Presented Direct and Substantial Circumstantial Evidence of Appellant's Guilt, and Proved the Necessary Element of Malice

Even if the Court were to find the argument is preserved, respondent submits the argument fails on the merits because the trial court did not err in denying the motion where the record demonstrates, in viewing the evidence in the light most favorable to the State, the State presented both direct and substantial circumstantial evidence which reasonably tended to prove appellant was guilty of murder. The evidence included testimony from appellant's girlfriend who directly connected appellant to the deadly confrontation when she testified appellant told her he shot the victim. Three witnesses who were at the scene also provided substantial circumstantial evidence from which the jury could infer that appellant was guilty of murder. Moreover, the State presented evidence to prove the necessary element of malice.

Maggie Littlejohn (Littlejohn) provided direct evidence of appellant's guilt. Her

testimony at trial was that appellant told her he shot the victim after a fight. (R.p.182). Further, Littlejohn testified appellant "tried to recant his story" after she told him she was going to turn him in. (R.p.183). Many of the details Littlejohn testified to matched details the jury heard from the witnesses at the scene of the shooting—providing the substantial circumstantial evidence and the inferences necessary to submit the case to the jury, and reasonably tending to prove appellant's guilt:

- Derrick Dease (Dease) helped break up the fight between appellant and the victim
- Jacobie Samuel (Samuel) heard the victim tell appellant he did not want to fight
- Samuel helped break up the fight
- Dease saw appellant leave the scene
- Littlejohn drove a gold Chevrolet Malibu
- Mark Ridges (Ridges) saw appellant leave in a gold car at about ten
- Littlejohn picked up appellant the first time at about ten
- Ridges saw appellant return to the scene ten to fifteen minutes later
- Littlejohn dropped appellant off on Hudson Street
- Ridges saw appellant walk back to the scene from Hudson Street
- Ridges heard gunshots as soon as appellant went around corner of house
- Dease was in backyard with victim and heard shooting from direction of Hudson Street
- Samuel was in backyard and saw someone come around corner and shoot at them
- Littlejohn picked up appellant the second time near shooting scene

(R.pp.134-36; p.152; pp.157-60; pp.166-71; p.177; pp.180-81); *see also Hepburn*, 406 S.C. at 429, 753 S.E.2d at 409 (holding if the State presented *any* direct evidence or *any* substantial circumstantial evidence reasonably tending to prove the guilt of the accused, appellate courts must affirm the trial court's decision to submit the case to the jury). The record demonstrates a rational factfinder, upon hearing the evidence presented, could reasonably find appellant guilty of murder.

Appellant argues Littlejohn's testimony was direct evidence of voluntary manslaughter and not direct evidence of murder. (App.Br.p.10). However, as the Supreme Court cautioned in *Pearson*, in the context of a directed verdict motion, such an argument improperly places the trial court in the jury's position. *See Pearson*, 415 S.C. at 472-73, 783 S.E.2d at 807 (distinguishing

between the analysis of a court considering a directed verdict motion and that which a jury performs, and noting the court must view the evidence in the light most favorable to the State) (citations omitted); *see also State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006) (holding when ruling on a directed verdict motion, the trial court is concerned with the existence of evidence, not its weight). The Court explained, "[A]lthough the *jury* must consider alternative hypotheses, the *court* must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt. This objective is founded upon reasonableness." *Pearson*, at 473, 783 S.E.2d at 807 (quoting *State v. Bennett*, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016) (emphasis in original)).

Here, the State presented evidence of the essential elements of murder, including malice, and, at the directed verdict stage, it was not for the trial court to weigh the facts and find the inferences from the evidence demonstrated appellant's guilt to the exclusion of every other reasonable hypothesis. *See Pearson*, 415 S.C. at 470, 783 S.E.2d at 806 (holding appellate courts view the evidence and all reasonable inferences in the light most favorable to the State when reviewing the denial of a directed verdict motion). Regarding malice, the pathologist testified the victim was shot at least four times—in the neck, chest, and twice in the back. (R.p.72; pp.74-75; p.77). Respondent submits other witnesses also supplied evidence of malice. Witnesses at the scene testified appellant left after the fight and had time to cool down, yet returned later and, without saying a word to anyone and without further provocation, appellant went to the backyard where the victim was standing, and witnesses testified they immediately heard gunshots or saw someone shooting, although they admitted they did not see the person's face. (R.pp.134-36; pp.157-60; pp.169-71; pp.176-81). The jury heard and weighed the evidence and testimony, was instructed on murder, voluntary manslaughter, and self-defense,

and resolved any inconsistencies in the evidence to find appellant guilty of murder beyond a reasonable doubt. (R.pp.253-69; p.272); *see also Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (holding, after viewing the evidence in the light most favorable to the State, the relevant question is whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt which gives full responsibility to the trier of fact to fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from the facts).

Therefore, because the State presented evidence to meet the "any evidence" standard to submit the case to the jury, the trial court did not abuse its discretion in denying appellant's motion for a directed verdict.

CONCLUSION

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

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

SHERRIE BUTTERBAUGH
Assistant Attorney General

WILLIAM B. ROGERS, JR.
Solicitor, Fourth Judicial Circuit

BY: _____
SHERRIE BUTTERBAUGH

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-6305

ATTORNEYS FOR RESPONDENT

September 7, 2017.

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Marlboro County
Michael G. Nettles, Circuit Court Judge

THE STATE,

Respondent,

v.

TYRONE QUICK,

Appellant.

Appellate Case No. 2016-000540

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This 7th day of September, 2017.

SHERRIE BUTTERBAUGH
Assistant Attorney General

ATTORNEY FOR RESPONDENT