

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

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SC Court of Appeals

BRANDON HEATH CLARK

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2015-001898

SUPPLEMENTAL APPENDIX

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS'

Appeal from Greenville County

Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRANDON HEATH CLARK,

APPELLANT

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

Did the trial court judge err by not granting appellant's motion for directed verdict when the State failed to show that the bullets from appellant's gun killed the victims?

STATEMENT OF THE CASE

Brandon Clark was indicted for two counts of murder and two counts of possession of a weapon during the commission of a violent crime by the Greenville County grand jury. He was tried between November 2- 4th, 2009 before the Hon. Edward W. Miller. He was represented by Scott Robinson, Esquire. He was convicted, and sentenced to 40 years on each murder and 5 years on each weapons charge.

This appeal timely follows.

ARGUMENT

The trial court judge erred by not granting appellant's motion for directed verdict when the State failed to show that the bullets from appellant's gun killed the victims.

Appellant was convicted of events that occurred on July 29, 2006. The incident location was ■■■ Garrison Rd. in Greenville County, the home of a young man, Stephen Watson. On that date, a number of people gathered at the incident location to watch a fight. Two weeks prior to this date, one of the victims, Cameron Wade, and a boy named Josh got into a fight. R. 9. In order to settle the score, a notice was put out on a MySpace.com page, and a number of people showed up to observe the anticipated physical fight between Wade and Josh. The number of people who attended the expected brawl ranged from 20 to 200. R. 188. According to testimony at trial, Josh was running around without his shirt on, swinging a baseball bat, and drug use was present at this home. R. 11. The resident of the home, Watson, testified he called Wade and told him not to come to the house. R. 12. While on the phone, Josh took the phone out of Watson's hand and threw it across the yard. R. 12. Ultimately Wade, and Chris Garland were shot and killed while sitting in the Honda Accord that Garland drove to the location. R. 13. On cross examination, Watson testified that Josh made statements that he was going to "get even" with Wade. R. 16.

There was much activity at ■■■ Garrison Road that night. Watson testified he previously shot a gun at that location, a .25 caliber automatic. R. 13 -- 14. Watson also testified that he heard over 50 gunshots that night. R. 17. An investigator later testified that witnesses recalled between 9 and 60 gunshots fired at the incident location that evening. R. 189.

Another state's witness, Tyler Stone, also testified that he observed the Josh with the baseball bat, and running around with his shirt off and beating on his chest trying to determine where Wade was. R. 23 – 24. Stone testified that he heard 9 shots, and then heard 3 more after that. R. 29. Stone also testified that Josh said he was going to kill Cameron Wade. R. 30. Another witness testified that she heard at least 20 gunshots. R. 66. Yet another witness testified that he also heard Josh threaten Wade. R. 104.

Josh testified at trial and admitted that he was drinking, and acting out of control. R. 35. He testified that he assaulted a total stranger with a stick that night. R. 37. He also admitted that he threw a tire iron at the car the victims drove to the location. R. 39, 49. Josh denied that he ever threatened to kill Cameron Wade. R. 47. Josh also put his leg through the back window of the victim's car which resulted in his getting a permanent scar on his leg. R. 52 – 56. Josh also testified that he used to own a .357 magnum, but claimed that he got rid of it two years before these events. R. 56.

A state's witness, Christopher Allison testified as follows:

Q: Okay. What happened next?

A: Like I said, we got down -- we started heading down there and we heard the boy in the white hoodie say it was going to be a fair fight between Cameron and Josh.

Q: Right.

A: And then we saw the fire -- or gun -- muzzle fire, come above the hood of the car, the last car, the dark-colored Honda.

Q: One of the cars that was parked down there, one of the cars that came with Cameron Wade?

A: Yes.

Q: Okay.

A: We seen the muzzle fire and that's when Brandon shot his gun and we got in my car.

Q: What did -- did you see Brandon fire his gun?

A: Yeah, I see him fire it upwards.

Q: How many times did he shoot upwards?

A: About nine times.

Q: So it's your testimony he fired the gun in the air?

A: Yes, sir.

R. 105.

This witness also testified that he saw David Murray, another person at the party, with a small black revolver. R. 109.

Appellant and the State entered into a stipulation and agreed that appellant fired his pistol at the incident location nine times. At the scene nine .40 caliber shell casings were found. R. 115.

The pathologist testified that he extracted a moderately deformed, medium caliber, fully jacketed missile from Chris Garland. R. 119. The pathologist was unable to recover a bullet from Cameron Wade. R. 122. A forensic technician testified that a number of 9 mm shell casings were found underneath the car seat where one of the victims was found. R. 129; 133. A gun was collected from under the right leg of Cameron Wade. R. 181. .40 caliber bullets were found at least 10 yards away from where the victims were shot. R. 156-157. No .40 caliber bullets were found immediately around the car. R. 187.

The state's firearm examiner testified that he could not connect the bullet that killed Cameron Wade (sic) with the gun that fired the 9 .40 caliber shots. R. 205.

At the close of the State's case, trial counsel made a motion to the court for a directed verdict on the basis that the State produced no evidence that appellant shot either of the two victims. R. 213- 215. The judge denied the motion. R. 215. At the conclusion of trial, counsel made a motion to set aside the jury verdict because the forensic expert did not connect the fatal bullet with the bullets that appellant stipulated he had fired that evening. R. 254. The judge denied the motion. R. 254.

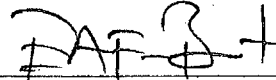
The trial court judge erred by not granting appellant's motion for a directed verdict because the evidence presented did not raise more than a mere suspicion that appellant was guilty of these two murders.

A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. State v. McCombs, 368 S.C. 489, 629 S.E.2d 361 (2006); State v. McKnight, 352 S.C. 635, 642, 576 S.E.2d 168, 171, *cert. denied*, 540 U.S. 819, 124 S.Ct. 101, 157 L.Ed.2d 36 (2003); State v. Rothschild, 351 S.C. 238, 243, 569 S.E.2d 346, 348 (2002). The circuit court should not refuse to grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. State v. Mitchell, 341 S.C. 404, 409, 535 S.E.2d 126, 127. "Suspicion" implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001). *See also* State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2004). In this case, the evidence presented by the State did not rise above the level of mere suspicion that appellant is guilty because the state did not offer any evidence to show that appellant's firing of his pistol resulted in the death of either victim. Indeed, the evidence presented tends to suggest that he is not guilty of murder since the bullets which appellant admitted firing were at least 10 to 12 feet away from the

bodies of the victims. The state failed to prove that appellant was guilty beyond a reasonable doubt. Respectfully, appellant asks this Court to reverse his convictions and direct a verdict of acquittal.

CONCLUSION

For the preceding reason, appellant respectfully asks this Court to reverse his convictions and direct a verdict of acquittal.



Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT.

This 20th day of September, 2011.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRANDON HEATH CLARK,

APPELLANT

CERTIFICATE OF SERVICE

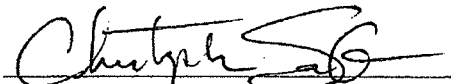
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Alphonso Simon, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 20th day of September, 2011.



Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 20th day of September, 2011.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: May 16, 2021

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY

The Honorable Edward W. Miller, Circuit Court Judge

THE STATE

RESPONDENT,

V.

BRANDON HEATH CLARK,

APPELLANT.

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Did the trial court judge err by not granting appellant's motion for directed verdict when the State failed to show that the bullets from appellant's gun killed the victims?

RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

Whether the trial court erred in denying Appellant's motion for a directed verdict when there was both direct evidence and substantial circumstantial evidence presented at trial that indicated Appellant fired the shots that killed both victims?

STATEMENT OF THE CASE

On November 2-4, 2009, Appellant Brandon Heath Clark ("Appellant") was tried by a jury for the murders of Christopher Garland and Cameron Jack Wade. Appellant was tried in the Greenville County Court of General Sessions before the Honorable Edward W. Miller, Circuit Court Judge. Scott Robinson, Esquire represented Appellant. The State was represented by Bryna Seay, Assistant Solicitor for the Thirteenth Judicial Circuit. On November 4, 2009, Appellant was convicted of both murders and two counts of possession of a weapon during the commission of a violent crime. (R. pp. 251-52). Appellant was sentenced to a period of confinement of forty years for each murder conviction, and five years for each of the possession of a weapon during the commission of a violent crime convictions. (R. p. 260).

Before this Court is Appellant's direct appeal of his murder convictions. He requests this Court reverse his convictions and order a new trial. The State respectfully requests this Court deny Appellant's appeal and affirm his convictions for the murders of Christopher Garland and Cameron Jack Wade, and his convictions for possession of a weapon during a commission of a violent crime.

STATEMENT OF FACTS

On July 29, 2006, Appellant shot Christopher Garland and Cameron Jack Wade while they were inside a car outside of Steve Watson's house in Greenville County. Garland suffered a single gunshot wound. The bullet travelled through his back into his right chest, then his right lung, then his heart, and through his sternum.¹ (R. p. 119). The bullet lodged in the tissue just beneath the skin of his chest. (R. p. 119). Wade suffered a through and through gunshot wound to the head. (R. p. 121-22). The bullet entered in the area around his right temple, and exited through the back of his head.² Id.

The Party

On July 29, 2006, a gathering was held at Steve Watson's home in celebration of Cameron Wade's ("Wade") birthday.³ (R. p. 9). Several witnesses testified that a physical altercation between Wade and Joshua Wood ("Wood") was also planned for that evening. (R. pp. 10, 34, 61, 68). Wood and Wade had been involved in a physical confrontation within the two weeks prior to the July 29 gathering. (R. pp. 15-16, 22-23, 33-34, 44-45, 68). While a third individual was involved in the first altercation, Wade and Wood were the only ones set to be involved in the second fight. (R. pp. 9-10, 33-35, 61, 68-69).

¹ The pathologist noted the wound indicated the bullet passed through something prior to hitting Garland, and the wound was consistent with a trajectory of being shot through the headrest. (R. pp. 120-21).

² The pathologist testified that it appeared Wade was sitting with his head turned distinctly to his right as if he was looking back over his right shoulder. (R. p. 122).

³ Watson testified that he was initially unaware a gathering was going to be at his house, but he learned of it on MySpace. (R. p. 10).

Witnesses gave different accounts regarding how many were at the gathering. Prior to the victims' arrival, Watson indicated no more than fifty people showed up for the party. (R. p. 11). Tyler Stone indicated there were at least fifty people present, (R. p. 23), and Saltz stated there were around 100 people at scene. (R. p. 65). Altogether, law enforcement was told there were between twenty and 200 people at the gathering. (R. p. 188).

Wood arrived at the party with his friend David Murray. Most of the witnesses indicated Wood was acting crazy that evening. (R. pp. 23, 35, 69; see R. p. 11). In fact, Wood even admitted that he was "acting ignorant," and that he was drinking, and acting wild and out of control. (R. p. 35). However, none of those witnesses testified they saw Wood with a gun. (R. pp. 36, 69).

Tiffany Saltz, another party attendee, testified she saw Appellant with a gun that evening. (R. pp. 61-2). She noted it was in his pants, and he had his shirt fashioned in a manner that allowed the gun to be visible. (R. p. 62). Saltz also testified that it appeared Appellant was aggravated, and that he was in an ill mood. (R. pp. 62, 64). She admitted that in prior statements, she informed law enforcement that she told Appellant not to shoot her. (R. p. 64). Saltz did not see anyone else with a gun. (R. p. 64). She also did not see the shooting. (R. p. 64). She also acknowledged she did not check everyone for guns. (R. p. 65).

David Murray testified he went to the gathering with Wood. (R. p. 68). It was his understanding that there would be a rematch of the prior fight between Wade and Wood. (R. p. 68). Murray was not present for the first fight. (R. p. 68). Murray noted that when the other group arrived, "a bunch of people started

running down there and they started running up there and it just got pretty crazy.” (R. pp. 69, 1 20-22). Murray watched Wood hit one guy, and then the two heard gunshots. (R. p. 70). Murray could not recall where they were when he heard the shots. (R. p. 70).

Woods testified that he recalled when Wade and Garland arrived. (R. p. 36). Multiple cars pulled up alongside the road. He recalled there were five to six cars there. (R. p. 36). Woods saw one guy that he did not recognize get out of one of the cars. (R. pp. 36-37). When Wood determined he did not know the guy, Wood hit the guy in the face with a stick. (R. p. 37). Shortly thereafter, Wood started hearing gunshots. (R. p. 37).

The Shooting

Christopher Allison, one of Appellant's friends, went to the gathering with Appellant and Jordan Mardis. Christopher was standing by Appellant when they saw Wade and Garland arrive. (R. pp. 96, 98). Christopher indicated that Wade and Garland were part of a four car entourage. (R. pp. 96-98, 104-05). Christopher heard a gunshot and saw a shot being fired over the roof of the last car of the entourage, a dark colored Honda. (R. pp. 98, 105). In response, Appellant fired his .40 caliber Smith and Wesson handgun approximately nine times in the air. (R. pp. 98, 105). After Appellant fired the shots, the two ran to Christopher's car. They drove away soon after with Mardis. (R. pp. 98-99). Appellant drove the group to Christopher's brother's house. (R. p. 99).

Murray did not see who was firing the shots. (R. p. 70). Murray and Wood then started to leave. They got into Murray's truck and pulled out of the

driveway. (R. pp. 70, 73). However, they turned around to see if some of their friends were still at Watson's house. (R. pp. 70, 73). Wood then got out of the truck, picked up a tire iron from the bed of the truck, and threw the tire iron at the victims' vehicle. (R. pp. 70-71, 73, 74, 76, 77). After they left, the three headed to Dustin Allison's house. (R. p. 71). At Dustin Allison's home, Murray, Wood, and Mardis met up with Christopher and Dustin Allison, Katye Crawford, and Appellant. (R. p. 71). Murray recalled Appellant said Chris was supposed to throw his gun in the river. (R. p. 72). Murray did not see Appellant with a gun, and Murray thought Appellant had only fired shots into the air.⁴ (R. p. 72).

Wood testified that he saw Appellant at the time of the shooting. (R. p. 38). Appellant was behind Wood. (R. p. 38). Wood saw Appellant fire his gun twice into the air, but he did not see what happened after that. As soon as Wood saw the gunshot, he ran. (R. pp. 38-39).

Wood testified that he spoke with Appellant at the house. Wood stated, "[w]ell, when we got back he [Appellant] looked really scared and he had the gun in his hand and said, I think I shot them, I think I shot them. And I said, no, you didn't, you didn't shoot them, you shot into the air." (R. p. 41, ll 12-16). Wood noted that the gun Appellant had that evening was one Appellant carried in his pockets. (R. p. 41). Wood also testified that Appellant indicated he was going to throw the gun in the Saluda River. (R. p. 42).

The Police Investigation

Dar Shaw of the Greenville County Forensics Division processed the victims' vehicle. He testified he saw a couple of possible projectile holes in the

⁴ Murray had surmised that the shots he heard were fired in the air. (R. p. 70).

windshield. (R. p. 82). Shaw also noted a side vent wing window was broken, and there was a hole in the top of the roof from where photographs indicated a tire iron was removed. (R. p. 82). Investigator Fields also testified that there were two large holes in the back windshield, and a small window behind the back window of the passenger side without glass in it. (R. p. 180). She also noted there appeared to be bullet holes in the door post between the driver's seat and the back passenger seat on the passenger side of the car. (R. p. 180).

A nine millimeter handgun and a magazine that belonged to Garland were found beneath Wade in the passenger seat. (R. pp. 129, 181). Three casings that were fired from the handgun were also collected at the scene. (R. pp. 128, 194-96).

Law enforcement was able to determine that a copper jacket from a projectile found behind the rear seat inside the victims' car was fired by a gun consistent with a firearm marketed by Smith and Wesson handgun. (R. pp. 128, 194, 197-98). The jacket was inconsistent with being fired from Garland's handgun. (R. p. 197). The projectile that was recovered from Garland's body was determined to be a .40 caliber projectile that was consistent with being fired by a firearm marketed by Smith and Wesson. (R. pp. 199-200). The two projectiles were consistent with one another, but analysis as to whether they were fired by the same firearm was inconclusive. (R. pp. 200, 204). Nine .40 caliber shell casings were found at the scene. (R. pp. 138-39, 146, 150, 151). They were found ten to twelve yards from the victims' vehicle. (R. pp. 156, 157). Those were all fired by the same caliber of .40 caliber Smith and Wesson. (R.

pp. 200, 201, 204). The firearms and toolmarks analyst testified he could not make any conclusions as to whether the casings that were retrieved from the scene were fired by the same firearm as the projectiles because he did not have the firearm for comparison. (R. p. 205).

The parties stipulated that Appellant was present at the gathering on July 29, 2006, he fired his pistol nine times, and the nine .40 caliber shell casings recovered from the scene were the result of him firing his pistol nine times. (R. p. 115).

ARGUMENT

I. THE TRIAL COURT DID NOT ERR IN DENYING APPELLANT'S MOTION FOR A DIRECTED VERDICT; THERE WAS BOTH DIRECT EVIDENCE AND SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE PRESENTED AT TRIAL THAT INDICATED APPELLANT FIRED THE SHOTS THAT KILLED BOTH VICTIMS.

Standard of Review

When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight. State v. Al-Amin, 353 S.C. 405, 411, 578 S.E.2d 32, 35 (Ct.App.2003) (citing State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002)). A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. State v. Gaines, 380 S.C. 23, 32, 667 S.E.2d 728, 733 (2008). When reviewing a denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must find the case was properly submitted to the jury. Weston, 367 S.C. at 292-93, 625 S.E.2d at 648; State v. Cherry, 361 S.C. 588, 593-94, 606 S.E.2d 475, 477-478 (2004). An appellate court may reverse a trial court's denial of a motion for a directed verdict if there is no evidence to support the trial court's ruling or if the ruling is based on an error of law. State v. Dantonio, 376 S.C. 594, 603, 658 S.E.2d 337, 342 (Ct.App.2008).

Discussion at Trial

After the State rested, and after discussions regarding the jury charge to be given, Appellant moved for a directed verdict. (R. pp. 213-14). In support of

his argument, he directed the trial court to State v. Buckmon,⁵ a 2001 case, and State v. Hernandez.⁶ Appellant argued the state produced no evidence that he shot either of the two victims. He noted that the firearms and toolmark examiner could not tie the nine shell casings to the bullet that struck Garland, and that the projectile that killed Wade was never recovered. Appellant argued that in light of these facts, the State had only raised a mere suspicion of guilt, and that Appellant was entitled to a directed verdict. (R. p. 214). The trial judge denied the motion. (R. pp. 214-15).

There's reasonable inferences to be drawn from the facts presented from which a jury could conclude that he is guilty. And specifically that would be the stipulation about the firing of the nine shots, the location of the shells, the testimony of Dr. Ward with respect to the size of the wounds to the two deceased. And so I decline to grant your motion.

(R. p. 215, ll 1-7).

Discussion

The trial court correctly denied Appellant's motion for a directed verdict. There was more than sufficient evidence of Appellant's guilt presented at trial. First, Appellant admitted he fired his handgun at the scene nine times, and the nine .40 caliber shell casings found at the scene were from him firing his gun. (R. p. 115). The projectile retrieved from Garland's body was consistent with being fired from a .40 caliber Smith and Wesson handgun. (R. pp. 199-200). The second projectile found in the victims' vehicle was also consistent with being fired from a .40 caliber Smith and Wesson handgun. (R. pp. 128, 194, 197-98, 200, 204). Christopher Allison, Appellant's friend, testified that Appellant's pistol

⁵ State v. Buckmon, 347 S.C. 316, 555 S.E.2d 402 (2001).

⁶ State v. Hernandez, 382 S.C. 620, 677 S.E.2d 603 (2009).

was a .40 caliber Smith and Wesson handgun. (R. p. 98). Christopher also testified that he saw Appellant fire his pistol approximately nine times in response to possibly seeing a muzzle flash from a vehicle in the victims' entourage. (R. p. 98). Thus, the jury would have a basis for inferring that when Appellant fired his gun "into the air," he fired it in the direction towards the victims' vehicle.

Further, Wood testified that Appellant told him he thought he shot the two victims when their group got together after the shooting. (R. p. 41). Murray testified that Appellant had Christopher get rid of the gun. (R. p. 72). Both Murray and Wood indicated that the gun was going to be thrown into a river. (R. pp. 42, 72). There was no evidence that the projectiles fired at the scene were from another firearm. One firearm was retrieved from the victims' vehicle, a 9mm handgun. (R. pp. 129, 181). The firearms and toolmarks analyst determined that the three shell casings found near the victims' vehicle were fired from Garland's nine millimeter handgun found underneath Wade, who was sitting in the passenger's seat. (R. pp. 128-29, 194-97). The analyst also determined the copper jacket from a projectile that was recovered from inside the vehicle was not fired by the nine millimeter handgun. (R. p. 197). Witnesses consistently testified they saw no one else with a gun on the night of the shooting.⁷ Two witnesses were asked if they owned handguns. (R. pp. 56-58; Supp. R. pp. 1). Neither owned a handgun on the night of the shooting, and there was no

⁷ Appellant misapprehends the record when he states a witness testified he saw Murray with a small black revolver on the night of the shooting. (See IBOA, at p. 7). Christopher testified during cross examination that he had seen Murray with a small black revolver that may have been a .25 caliber pistol at some time, and that he had seen Murray possibly with a .38 at some other time. (R. p. 109). At no point does Christopher state he saw Murray with a pistol on the evening of the shooting.

testimony indicating the firearms those witnesses had once owned were consistent with a .40 caliber Smith and Wesson handgun. (R. pp. 14, 56-58, Supp. R. p. 1; see R. p. 109).

Contrary to Appellant's assertions, the evidence presented at his trial did more than merely raise suspicion of guilt. The evidence established Appellant was in possession of a weapon consistent with the weapon that fired the bullet recovered from one victim and another bullet recovered from the victims' vehicle, he fired his gun in the direction of the victims' vehicle nine times, and Appellant got rid of his firearm shortly after the shooting. The fact that none of the shell casings were immediately next to the victims' vehicle is of no consequence to whether there was sufficient evidence that Appellant was guilty of the two murders. There was no testimony or evidence presented at trial indicating the victims were shot at close range. Furthermore, Appellant's reliance upon the argument that the evidence was insufficient because the shell casings were not directly matched to the projectiles found is misplaced. The firearms and toolmarks analyst indicated in his testimony that he could not make a determination of whether the shell casings were fired from the same gun as the projectiles because he did not have the weapon to make the comparison. (R. pp. 204-05). The testimony at trial indicated such a comparison would not have been possible because Appellant disposed of his handgun. (See R. pp. 42, 72).

Based on the evidence presented at trial, the jury had sufficient evidence that would support a finding that shots Appellant fired on July 29, 2006 just before the victims were found in their car were the shots that killed them. As a

result, the trial court did not err in denying Appellant's motion for a directed verdict. Thus, this argument for relief should be denied and Appellant's convictions should be affirmed.

CONCLUSION

For the foregoing reasons, the Respondent respectfully requests that this Court deny Appellant's appeal and affirm his murder convictions and his convictions for possession of a weapon during the commission of a violent crime.

Respectfully submitted,

ALAN WILSON
Attorney General

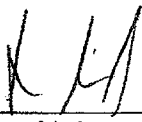
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By: 

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September 20, 2011.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY

The Honorable Edward W. Miller, Circuit Court Judge

THE STATE

RESPONDENT,

V.

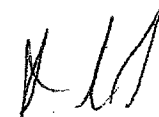
BRANDON HEATH CLARK,

APPELLANT.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007)(requiring redaction of social security numbers, names of minor children, financial account numbers, and home addresses).

This 20th day of September, 2011.



ALPHONSO SIMON, JR.
Assistant Attorney General

ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY

The Honorable Edward W. Miller, Circuit Court Judge

THE STATE

RESPONDENT,

V.

BRANDON HEATH CLARK,

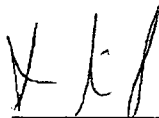
APPELLANT

CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., counsel for the Respondent, certify that I have served the within Final Brief of Respondent and Certificate of Compliance on Appellant by depositing three (3) copies of the same via U.S. mail, first class, postage prepaid to his attorney of record, Elizabeth A. Franklin-Best, Esq., South Carolina Commission on Indigent Defense, Division of Appellate Defense, 1330 Lady Street, Ste. #401, Columbia, SC 29201.

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

This 20th day of September, 2011.



ALPHONSO SIMON, JR.
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ATTORNEY FOR RESPONDENT

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Brandon Heath Clark, Appellant.

Appellate Case No. 2009-145547

Appeal From Greenville County
Edward W. Miller, Circuit Court Judge

Unpublished Opinion No. 2012-UP-549
Heard September 10, 2012 – Filed October 10, 2012

AFFIRMED

Appellate Defender Elizabeth Franklin-Best and
Appellate Defender Dayne C. Phillips, both of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Donald J. Zelenka, Assistant
Attorney General Alphonso Simon, Jr., all of Columbia;
Solicitor William Walter Wilkins, III, of Greenville, for
Respondent.

PER CURIAM: Brandon Heath Clark appeals his convictions for two counts of murder and two counts of possession of a weapon during the commission of a violent crime. He contends the trial court erred in denying his motion for a directed verdict on his murder charges because the State failed to present any evidence he fired the gun that killed either victim. Because the record includes sufficient evidence which reasonably tends to prove Clark's guilt, we affirm. When reviewing a trial court's denial of a defendant's directed verdict motion, an appellate court must view the evidence in a light most favorable to the State. *State v. Venters*, 300 S.C. 260, 264, 387 S.E.2d 270, 272 (1990). Additionally, an appellate court must find a case was properly submitted to the jury if any direct evidence or any substantial circumstantial evidence reasonably tends to prove the guilt of the accused. *State v. Dickey*, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011).

In *State v. Ward*, 374 S.C. 606, 615, 649 S.E.2d 145, 150 (Ct. App. 2007), this court affirmed the denial of a directed verdict when the State presented evidence to show the defendant and a codefendant were involved in a fight with the victim; as the victim fled, the codefendant threatened to kill someone that night; and moments after that threat, the defendant and the codefendant got into a truck from which gunfire erupted towards the vehicle in which the victim rode. Furthermore, the driver of the truck and the codefendant stated the defendant was shooting out of the passenger side window of the truck. *Id.* Here, Clark stipulated not only his presence, but also that he fired his gun nine times at the murder scene. Additionally, the State's firearm forensic analysis revealed the bullet extracted from one of the victims was a .40 caliber bullet, the same caliber as Clark's gun. Further, the State's forensic analyst testified the shells, which Clark admitted discharged when he fired his gun, had similar microscopic marks to the bullet police extracted from one of the victims. Moreover, the State presented testimony indicating Clark, immediately after the shooting, stated he believed he shot the victims. Accordingly, the State presented sufficient evidence upon which the trial court could rely in denying Clark's directed verdict motion.

AFFIRMED.

SHORT, KONDUROS, and LOCKEMY, JJ., concur.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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October 26, 2012

The Honorable Paul B. Wickensimer
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Greenville, SC 29601-2121

REMITTITUR

Re: The State v. Clark, Brandon Heath
Lower Court Case No. 2007GS2300443, 2007GS230443A,
2007GS2302442
Appellate Case No. 2009-145547

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Alphonso Simon, Jr.
Dayne C. Phillips