STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions
The Honorable Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2019-001589

THE STATE, ...RESPONDENT,

v.

MICHAEL ANTHONY BREYAN, ...APPELLANT.

INITIAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge properly denied Appellant's motion for a directed verdict because the State provided direct evidence of the charged offense.

STATEMENT OF THE CASE

Appellant was indicted by the Greenville County Grand Jury for threatening the life of and/or harm to a public official. On September 11, 2019, Appellant proceeded to a jury trial before the Honorable Robin Stilwell. Assistant Solicitor Bryna Seay, Esquire, represented the State; Michael Martinez, Esquire, represented Appellant. The jury found Appellant guilty as charged and the trial judge sentenced him to four years' incarceration with credit for time served.

Appellant timely filed a notice of appeal and brief. This brief of Respondent now follows.

STATEMENT OF FACTS

Judge Ernest Michael O'Brien, a magistrate for Greenville County, testified about his interactions with Appellant which led to the instant case. Judge O'Brien, a bond court judge, signs arrest warrants, search warrants, and conducts bond hearings for individuals post-arrest. On May 31, 2018, Appellant was brought in front of Judge O'Brien for a hearing on related charges. Judge O'Brien read Appellant his rights, including his right to remain silent, and tried to read his charges when Appellant began reading off of documents he brought with him. Appellant began a broad discussion of his First Amendment rights, his Fourteenth Amendment rights, and other topics. After a while, Judge O'Brien told Appellant that he had his chance to speak, and that the judge needed to continue in order to proceed with the bond hearing. In response, Appellant began swearing at Judge O'Brien, and exclaimed numerous things such as: (1) Judge O'Brien could "suck his dick"; (2) the judge could "fuck him." In response to Appellant's outburst and disruption, Judge O'Brien informed Appellant he was charging him with contempt of court. Also, because he was charging Appellant with contempt of court, Judge O'Brien began taking extemporaneous notes of the hearing, as was his typical practice for such situations. At this point in the hearing, Judge O'Brien viewed his notes to refresh his recollection of the hearing. Judge O'Brien recalled that following the contempt of court charge, he asked the officer in charge of Appellant to remove him from the courtroom. At this point, Appellant yelled at Judge O'Brien that he would "fuck [him] up, [him] and [his] family." Judge O'Brien immediately interpreted that as a threat. (Tr.p.42, line 5–Tr.p.49, line 10; State's Exhibit 1)

Deputy Jesse Wasserman of the Greenville County Sheriff's Office also testified at trial. Deputy Wasserman, a K9 handler involved with the traffic interdiction unit of the sheriff's office, was at the courthouse pursuant to a narcotics seizure he had made on the interstate earlier

that day. After placing his prisoner in a holding cell, Deputy Wasserman went the bond court facilities to type up warrants for the person he had just arrested. While typing, he heard "yelling, screaming" and "profanities being used" so he looked around the corner into the bond court. Deputy Wasserman heard Appellant exclaim that he was "going to fuck [Judge O'Brien] up." Deputy Wasserman also immediately interpreted these statements as a threat to the judge." Deputy Wasserman spoke with the judge after Appellant was removed from the courtroom, and Judge O'Brien informed Appellant that he also interpreted Appellant's statements as a threat to him. Deputy Wasserman then went to another judge, presented the judge with probable cause, and obtained a warrant against Appellant for threatening the life of a public official. (Tr.p.59, line 4–Tr.p.63, line 2)

At the conclusion of the State's case, Appellant's counsel requested a directed verdict on the charge, claiming the State failed to provide sufficient evidence of the charge because the statute requires a "more expressed threat" to the public official or his family's life, or bodily harm, but the State's evidence would call for the jury to "speculate about what [Appellant's] words meant." (Tr.p.68, line 13–Tr.p.69, line 5)

To support his argument, trial counsel cited to a trio of cases involving S.C. Code Ann. § 16-3-1040: In re Jeremiah W., 361 S.C. 620 (2004) (in which the defendant stated he "had a gun and he was going to blow the officer's fucking head off"); State v. Bridgers, 329 S.C. 11 (1997) (in which the defendant said, "I'm going to get my gun. I'm going to come to your home in Lake City. And I'm going to kill you."); and State v. Bailey, 416 S.C. 344 (Ct. App. 2006) (the defendant stated "I'm adding you to the list anyway. I'm going to kill you too.") Trial counsel claimed each of those cases included a clear communication of bodily harm or death, and in the

instant case the jury would have to "speculate" as to what Appellant meant. (Tr.p.68, line 13–Tr.p.70, line 7)

In response, the State argued Appellant's statements were clearly a threat, and Judge O'Brien testified he interpreted them as such, and such events occurred while the judge was exercising his duties as a public official. Therefore, through the testimony provided, the State provided direct evidence of Appellant's guilt for the charged offense. The trial judge noted that she would not pass judgment on the issue, and felt that the question of whether Appellant's statements were a threat was "quintessentially a jury question." However, the trial judge did note the State presented evidence that Appellant's statements were, in fact, a threat, and viewing the evidence in the light most favorable to it the State's case raised a question as to Appellant's guilt. Accordingly, the trial judge denied the motion for a directed verdict. (Tr.p.70, line 8–Tr.p.72, line 8)

After Appellant's testimony, trial counsel renewed his motion for directed verdict. The trial judge noted counsel was protected on the record, but did not change her ruling. (Tr.p.86, lines 6–13)

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). When ruling on a motion for a directed verdict, the trial court is concerned with the existence or non-existence of evidence, not its weight. State v. Curtis, 356 S.C. 622, 633, 591 S.E.2d 600, 605 (2004); State v. Condrey, 349 S.C. 184, 190, 562 S.E.2d 320, 323 (Ct. App. 2002). Ultimately, the question is whether, in view of the evidence in the light most favorable to the State, a rational trier of fact could find all the elements of the crime beyond a reasonable doubt. State v. Robinson, 310 S.C. 535, 539, 426 S.E.2d 317, 318 (1992) (finding any rational trier of fact could have found all the elements of the crime beyond a reasonable doubt in affirming the denial of a motion for directed verdict and citing Jackson v. Virginia, 443 U.S. 307 (1979)). The task of the trial court is to simply determine "whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." State v. Bennett, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016). "[I]f there is **any** direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011). The reviewing court should affirm if in viewing the evidence in the light most favorable to the State, "the evidence could induce a reasonable juror to find [the defendant] guilty." See State v. Pearson, 415 S.C. 463, 474, 783 S.E.2d 802, 808 (2016); also State v. Richburg, 250 S.C. 451, 459, 158 S.E.2d 769, 772 (1968) ("When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury.").

ARGUMENT

The trial judge properly denied Appellant's motion for a directed verdict because the State presented direct evidence which, viewed in the light most favorable to the prosecution, was a threat to take the life or harm a public official and his family, proving Appellant's guilt of the charged offense.

Appellant claims the trial judge erred by denying his motion for a directed verdict because his statements to Judge O'Brien were not a clear threat to harm him and his family. The State disagrees with this allegation of error. Appellant's statements were a clear threat to Judge O'Brien and were immediately interpreted as such by him and another witness to the incident, Deputy Wasserman. This direct evidence of the Appellant's guilt was more than sufficient to submit the issue to a jury.

Pursuant to S.C. Code Ann. § 16-3-1040:

> (A) It is unlawful for a person knowingly and wilfully to deliver or convey to a public official or to a teacher or principal of an elementary or secondary school any letter or paper, writing, print, missive, document, or electronic communication or verbal or electronic communication which contains a threat to take the life of or to inflict bodily harm upon the public official, teacher, or principal, or members of his immediate family if the threat is directly related to the public official's, teacher's, or principal's professional responsibilities.
> . . .
>
> (C) A person who violates the provisions of subsection (A), upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both.
> . . .
>
> (E) For purposes of this section:
> (1) "Public official" means an elected or appointed official of the United States or of this State or of a county, municipality, or other political subdivision of this State.
> (2) "Public employee" means a person employed by the State, a county, a municipality, a school district, or a political subdivision of this State, except that for purposes of this section, a "public employee" does not include a teacher or principal of an elementary or secondary school.
> (3) "Immediate family" means the spouse, child, grandchild, mother, father, sister, or brother of the public official, teacher, principal, or public employee.

The Direct Evidence of Appellant's Guilt

Initially, the State notes that throughout Appellant's brief, he implies the evidence against him was circumstantial and cites to prior South Carolina cases in which our Supreme Court found various trial courts should have granted directed verdict to the charged defendants based on the tenuous, insubstantial circumstantial evidence presented at trial. See State v. Odems, 395 S.C. 582, 588, 720 S.E.2d 48, 51 (2012) (finding defendant's interaction with two individuals who admittedly burglarized a home was not substantial circumstantial evidence of guilt when other circumstantial evidence disproved guilt, including fingerprints which matched the admitted burglars but not Odems); State v. Bostick, 392 S.C. 134, 137–41, 708 S.E.2d 774, 775–78 (2011) (police locating items belonging to victim in a burn pile behind Bostick's mother's home where prosecution presented no testimony that Bostick had control over the burn pile or was linked to the evidence found therein); State v. Lollis, 343 S.C. 580, 584–85, 541 S.E.2d 254, 256–57 (2001) (finding circumstantial evidence against Lollis for a charge of arson was insufficient where the only evidence against Lollis was his wife admitted to the arson, he had placed valuable in storage prior to a fire, he possessed a key to the storage unit used, and allegedly had financial troubles); and State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000) (defendant's fingerprint found at scene of burglary was not substantial circumstantial evidence of guilt because Appellant had a prior verified lawful presence in the house and State did not provide evidence of when fingerprint was left on the found glass).

Here, however, the case against Appellant was based on direct evidence, i.e. the testimony of witnesses who observed him make the statements. See, e.g., State v. Grippon, 327 S.C. 79, 83–84, 489 S.E.2d 462, 464 (1997) (explaining "direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness.") Both

Judge O'Brien and Deputy Wasserman observed Appellant make the statements in question. Accordingly, the evidence against direct, not circumstantial, and the fact that "any" direct evidence of Appellant's guilt was presented to the jury required the trial judge to deny the directed verdict motion and submit the issue to the jury. See Odems, 395 S.C. at 586, 720 S.E.2d at 50.

Explicit Threats of Harm

Appellant argues his statements to the judge claiming he would "fuck [him] up, [him] and [his] family was not an explicit threat to take the life of or inflict bodily harm on Judge O'Brien. However, the threat was anything but vague. "Fucking someone up" is common slang for harming another individual; Urban Dictionary defines the term as "Viciously and relentlessly attacking someone, usually to the point of visible injury." See, e.g., *Fuck Someone Up*, **Urban Dictionary**[1], https://www.urbandictionary.com/define.php?term=fucking%20someone%20up (last visited June 10, 2020).

Other courts which considered threats using such langue have reached the same conclusion. In S.L.L. v. MacDonald, 340 P.3d 773 (2014), the Court of Appeals of Oregon found a party's statement to his ex-wife that he would "fuck [her] up" was "an (1) 'unequivocal' threat of (2) 'imminent personal violence.'" Id. at 776. The court noted the disputed phrase was "a colloquial term that, in context, has but one meaning." Id. Similarly, in U.S. v. Temple, 447

[1] The State notes both this Court and the Supreme Court of South Carolina have relied on Urban Dictionary in the past to define modern slang terms relevant to the determination of issues on appeal. See, e.g., State v. Williams, 427 S.C. 246, 257 n.1, 830 S.E.2d 904, 910 n.1 (2019); State v. Odom, 376 S.C. 330, 338 n.1, 656 S.E.2d 748, 753 n.1 (Ct. App. 2007)

F.3d 130 (2d Cir 2006), the Second Circuit noted that the defendant's statement to the victim that he was "gonna fuck [him] up" was a threat.[2] Id. at 140.

In his brief, Appellant references the same cases he did at trial—In re Jeremiah W., Bridgers, and Bailey—for the proposition that S.C. Code Ann. § 16-3-1040(A) applies to explicit threats to kill or harm public officials. However, none of those cases specified a particular phrase or wording required to satisfy the requirements of the statute. In the instant case, Appellant made statements of which can only be interpreted as a threat. Both Judge O'Brien and Deputy Wasserman immediately interpreted Appellant's statements as threats to the judge and his family. Notably, Appellant argues his statements are not an explicit threat to harm, but is unable to provide a single alternate interpretation of his statements to this Court. Further, even if his statements were capable of multiple interpretations, submission to the jury is the proper recourse in such a situation. When evidence is susceptible to more than one interpretation or reasonable inference, it is the province of the jury to weigh the evidence and determine a defendant's guilt for the charged offense. See Richburg, 250 S.C. at 459, 158 S.E.2d at 772. It is the duty of the factfinder, not the trial court, to interpret the evidence and determine a defendants' guilt. Accordingly, the trial judge properly denied Appellant's motion for a directed verdict and submitted the issue to the jury.

[2] However, the court found Temple's statements did not demonstrate an immediate or imminent threat to harm as required by the statute through which Temple was charged, 18 U.S.C.A. § 111, because the prosecution was required to provide some evidence of Temple's ability to carry out that threat in a timely fashion. See Temple, 447 F.3d at 140.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court be affirmed.

Respectfully submitted,

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June 16, 2019

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PROOF OF SERVICE

I, Shana Montgomery, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by email to the address listed in AIS and with a copy of the same to follow in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served this 16th day of June, 2020.

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Good Morning,

Please see attached Initial Brief of Respondent and Designation of Matter in the above referenced case. Please confirm receipt. A hard copy will be sent out in today's mail. A copy will also be uploaded to the court today through our AIS system. Please let me know if you have any questions or concerns.

Thank You,

Shana Montgomery
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