STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Cherokee County
Honorable J. Derham Cole, Circuit Court Judge

The State of South Carolina,

Respondent,

vs.

Shaun Rogers, Jr.,

Appellant.

INITIAL BRIEF OF RESPONDENT

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RESPONDENT'S STATEMENT OF THE ISSUE ON APPEAL

The trial court did not err in denying the directed verdict motion because sufficient evidence existed for a reasonable juror to believe Appellant aided and abetted the burglary and attempted armed robbery because he accompanied the codefendant to Victim's door, both Appellant and the codefendant wore hoods, and the codefendant attempted to enter Victim's residence at gunpoint with Appellant following right behind. Codefendant and Appellant fled together, then Appellant drove the codefendant's vehicle and slowed down to enable the codefendant to discharge a firearm into Victim's dwelling.

STATEMENT OF THE CASE

Appellant Rogers was indicted for murder, attempted murder, possession of a firearm during the commission of a violent crime, discharging a firearm into a dwelling, attempted armed robbery, and burglary in the first degree. Following trial on October 7-9, 2019, Appellant was convicted by the jury of the burglary charge and attempted armed robbery. The jury was unable to reach a unanimous verdict on the remaining charges, and the Honorable J. Derham Cole declared a mistrial for those charges. Judge Cole sentenced Appellant to concurrent twenty years' imprisonment for both of the charges upon which the jury found Appellant guilty.

STATEMENT OF FACTS

On October 2, 2018, Victim and her fiancé, Danielle Smith, were sitting on the love seat in their living room when Smith heard a car door close. She looked out the window to see two men with hoods over their head next to a car in the neighbor's driveway adjusting their pants looking right at Smith and Victim's trailer. She then heard a knock on the door. When Victim opened the door, Victim looked up and down, and Smith saw a pink gun appear through the door way. The gun was pointed at Victim's head, "directly in his face." Tr. pp. 106-09; p. 112 (hoods on, adjusting pants); p. 118 (hoods covering head).

Victim quickly shut the door and pushed against the door, getting on one knee to hold the door shut. He told Smith to call the police. Tr. pp. 108-09. Smith frantically dialed the phone, then Victim commanded she give him the phone. He told the 911 operator, "I don't know who it is but I know **one of them's** last name is Jefferies." Tr. p. 109, lines 2-11. Jefferies was Appellant's codefendant and the triggerman.

They breathed a sigh of relief when Smith looked out the window and saw the car next door was now gone. It proved a short-lived reprieve as suddenly Smith heard "the voices" and then a noise like firecrackers and bullets came through the house. Victim was struck, lay on the ground, bloody and not moving. Tr. pp. 109-11. Smith identified Appellant as one of the two men who exited the car in the driveway next door. Tr. p. 111.

Smith clarified she saw both men get out of the car and both men come to the front door. They were both wearing hoods. She heard **both** men come up the wooden steps on the porch. After Victim told Smith to call the police, she heard **both** of them run down the stairs. Tr. p. 111-12. On cross-examination, defense counsel asked if Appellant ever came in house, Smith answered, "No.

He was just right behind Jefferies." Tr. p. 119, lines 13-15.

Victim's mother (Mother) lived four houses down the street from Victim's residence. She looked out her window and saw a car with two people inside sitting in her driveway for about 45 seconds. They turned the car back on and started to leave. The man in the passenger seat then put on his hood after the car pulled out. The car drove down the street and then came to another stop. Tr. pp. 124-26. Mother estimated the car proceeded at about 10 m.p.h., and she explained it stopped several times "to let" Jeffries hang out the window.

Mother described what happened next: "So about that time I see the passenger in the car protrude outta the window so much so that he put his left arm on top of the car, and then he had his right arm in the windowsill . . . as if you're going to climb out of a window. " Tr. p. 126, lines 4-8. Then as the car moved forward, Mother saw an arm come out of the window and she saw a gun. Tr, p. 126, lines 11-15. Mother ran outside by her front door and then down to the edge of her driveway as she heard gunshots and watched in horror. Tr. pp. 126-27.

The car rounded the corner and at the stop sign, the passenger sat back in the vehicle, but still fired shots at Victim's trailer. Tr. p. 127. The gun was pink. Tr. p. 127, lines 19-25. Mother provided more description:

> Probably not even 10 miles per hour, I would say, because they were going really slow down the road. Several times they came almost to a stop to let him hang out that window, and then they slowed down a lot again when they got right there before the house that my son's next-door neighbor – is where they slowed down again, and you could hear the first shot.

Tr. p. 128, lines 3-9. She testified she believed the two men in the car were working together to execute the drive-by shooting. Tr. p. 130, line 24 – p. 131, line 1.

Victim's father (Father) testified he knew Appellant. Father trained Appellant at two different jobs and was Facebook friends with Appellant. After the shooting, he saw a post on Appellant's Facebook page that showed a pink gun. Tr. pp. 136-37; pp. 151-52.

Virginia Lindsey lived next door to Victim. She returned home to see firetrucks, ambulances, and police vehicles everywhere. She discovered her house was full of bullet holes. Fortunately, her eleven and six year-old grandchildren that she raises were not at the house at the time. Tr. pp. 156-62.

Detective Billy Anthony of the Cherokee County Sheriff's Office testified that the shooting was called in about 8:25 a.m. the morning of October 2. Tr. p. 181, lines 1-3. He subsequently retrieved a pink gun from Jefferies mother's house. The gun was in a chest of drawers. Tr. pp. 197-98. Forensic analysis determined all the bullets recovered from the crime scene were fired by the same 9 mm gun. Tr. p. 208. The parties stipulated the cause of death was laceration of the brain due to a gunshot wound to the head. Tr. p. 218.

At 9:00 a.m. on October 2, 2018, two men came in at American Staffing, according to Angela Smith, the staffing coordinator, who testified for the State. One of the men, Jermaine Jefferies, had an appointment that morning. The other man was wearing a hoodie. Tr. pp. 165-66.

Mary Snipes Denton, the staffing coordinator for First Staffing, testified she received a phone call from Appellant at 10:00 a.m. Denton offered him a job, but he said he was not calling for himself, but for a friend, and he then put Jefferies on the phone. Jefferies was supposed to come in at 1:30 p.m. that day, but never showed up. Tr. pp. 168-69.

Jaquan Wood testified that on October 2, Jefferies and Appellant picked him up at his house at 9:45 or 10:00 a.m., and took him to the jail so he could pay the fee for his monitoring device he

was required to wear. Tr. p. 172.

Jefferies' mother testified for the defense. She confirmed that she owned the pink gun and testified she was unaware Jefferies was using it. Tr. p. 232. She testified that she knows Appellant. Appellant and Jefferies grew up together and hang out together a lot. Tr. pp. 233-34. She testified that Jefferies was driving her Silver vehicle that morning and dropped her off at work that morning, then picked her up at the end of her workday. Tr. pp. 234-35. Victim's mother previously testified that the car she saw in her driveway was silver, and she testified the man she identified as Jefferies was sitting in the passenger side. Tr. pp. 132-33.

ARGUMENT

The trial court did not err in denying the directed verdict motion because sufficient evidence existed for a reasonable juror to believe Appellant aided and abetted the burglary and attempted armed robbery because he accompanied the codefendant to Victim's door, both Appellant and the codefendant wore hoods, and the codefendant attempted to enter Victim's residence at gunpoint with Appellant following right behind. Codefendant and Appellant fled together, then Appellant drove the codefendant's vehicle and slowed down to enable the codefendant to discharge a firearm into Victim's dwelling.

Appellant argues the trial court erred in directing a verdict for both burglary and attempted armed robbery because there was insufficient evidence Appellant was more than merely present for the crimes. However, the evidence was sufficient for a rationale juror to find Appellant was not merely present, but aided and abetted in the burglary and attempted armed robbery: he accompanied the codefendant to Victim's house, they put their hoods over their heads before going to the door. Appellant went to the door with the codefendant, stood behind the codefendant as the codefendant pointed the pink gun across the threshold of the door, and left down the steps with codefendant when they fled. He drove codefendant away from the scene in the codefendant's car, and stopped and slowed the vehicle down to a speed allowing the codefendant to fire multiple shots into Victim's dwelling. Afterwards, Appellant did not distance himself from Jefferies, instead they pursued the next objective together, securing Jefferies work. Thus, a reasonable juror could conclude from the circumstances that Appellant came to Victim's door with the intent to encourage, support, and potentially assist Jefferies in the burglary and robbery before they were thwarted by Victim.

Standard of review

When considering a motion for directed verdict, the trial court is concerned with the

existence of evidence, not its weight. State v. Walker, 349 S.C. 49, 53, 562 S.E.2d 313, 315 (2002). In reviewing the denial of a motion for a directed verdict, the reviewing court must view the evidence in the light most favorable to the State. Id. 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 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, 781 S.E.2d 352 (2016). 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).

The United States Supreme Court noted the following:

> [T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. . . . This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.

Pearson, 415 S.C. at 471 n.2, 783 S.E.2d at 806 n.2 (quoting Jackson, at 319) (emphasis in the original); see 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.").

Accomplice liability

"Under the 'hand of one is the hand of all' theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." State v. Condrey, 349 S.C. 184, 194, 562 S.E.2d 320, 324 (Ct. App. 2002). "Under an accomplice liability theory, a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid abet, or assist in the commission of that crime through some overt act." Id. at 194, 562 S.E.2d at 325 (internal quotation marks omitted).

"In order to establish the parties agreed to achieve an illegal purpose, thereby establishing presence by pre-arrangement, the State need not prove a formal expressed agreement, but rather can prove the same by circumstantial evidence and the conduct of the parties." State v. Gibson, 390 S.C. 347, 354, 701 S.E.2d 766, 770 (Ct. App. 2010).

In State v. Newman, 80 S.E. 482, 482-83 (S.C. 1913), the Supreme Court found the following jury instruction to be clear and a correct statement of law:

> [W]here two persons commit an offense, one standing by and seeing the other, aiding and abetting him, and being present aiding and abetting in the commission of the offense, the one who stands by thus aiding and abetting is as guilty as the one who actually commits the manual act. For example, if two persons waylay another in order to take his life, take that other's life, and one does the actual shooting or cutting as the case may be, and the other stands by aiding and abetting, to give assistance, within the presence of the other, within range in order to give assistance, although he did not do anything as to pulling the trigger or cutting the person, he would be as guilty as the man who did the shooting or cutting.

Id. at 482-83. The Supreme Court further observed, "It is not necessary that those who unite in the commission of a crime shall agree upon each particular act." Id. In the instant case, a reasonable

juror could find Appellant accompanied Jefferies to the door in order to be ready to provide assistance in the burglary and robbery.

"A defendant cannot be an accomplice simply based on evidence he knew about the crime or was present at the scene. However, the circumstances change if there is additional evidence that the defendant intended to aid in the commission of the underlying crime, and then did or attempted to do so." Commonwealth v. Toritto, 67 A.3d 29, 35 (Pa. Super. Ct. 2013) (quoting Commonwealth v. Murphy, 844 A.2d 1228, 1234 (Pa. 2004)) (internal quotation marks omitted). The Superior Court observed, "The amount of aid need not be substantial so long as it was offered to the principal to assist him in committing or attempting to commit the crime." Id. (quoting Murphy, at 1234) (internal quotation omitted).

Like Appellant in the instant case, Toritto argued the Commonwealth's evidence only showed he was merely present during a drug transaction between his codefendant and an undercover agent. The Superior Court disagreed, noting evidence Toritto drove his codefendant to a bar and was present during much of the conversation between the codefendant and an undercover agent. The codefendant described Toritto as his cousin and told the agent he was good, and at the conclusion of the discussion between the codefendant and the agent about the drug transaction, Toritto handed the codefendant his keys so he could retrieve the drugs from Toritto's car. He also suggested after the exchange of money that codefendant should count it. Id. at 34-35.

In reaching its conclusion, the Superior Court noted, "While it was Toritto's hope that the jury would infer that Toritto merely learned of the narcotics transaction after he had already driven [codefendant] to the bar to meet [the agent], this was not the inference drawn by the jury, who had the benefit of observing the witnesses and hearing the testimony first-hand." Id. at 34.

As in Toritto, Appellant undoubtedly hoped the jury would believe that Appellant did not know when accompanying Jefferies to the front door that Jefferies was going to commit a burglary. However, as in Toritto, the sum of Appellant's actions accompanying Jefferies to the house, walking with Jefferies to the door as Jefferies pointed his pink gun through the threshold, scurrying away with Jefferies, and finally providing Jefferies with the opportunity to shoot and kill Victim by driving Jefferies' vehicle and slowing down to enable Jefferies to fire a volley of gunfire into Victim's house, provided the jury ample evidence that Appellant intended to provide aid and assistance to Jefferies in a burglary and robbery.

In State v. Cox, 258 S.C. 114, 187 S.E.2d 525 (1972), in a prosecution for failure to stop for a blue light, law enforcement came upon the defendant's car and another car shortly before they sped off on a drag-race. The officer pursued the vehicles, stopped them both, but again pursued defendant's vehicle when it sped away. The vehicle stopped again and two people fled. The officer apprehended defendant and later identified him as the driver. However, the defendant testified he was just a passenger and not the driver. On appeal, the defendant complained that if he was not the driver, there was insufficient evidence he aided the other individual, Vaught. The Supreme Court disagreed, holding:

> The appellant and Vaught had been friends for a number of years. On the night in question, after returning to Charleston from a visit with their girlfriends, they went drinking together. When first seen by Patrolman Kennerly, the appellant's Pontiac was stopped on the interstate highway alongside another automobile. The strong inference, doubtless drawn by the jury, is that a race was in the offing. Appellant's ownership of the car, inferably poised for an illegal race when the episode began; his failure to exercise his right to control over the operation of the car; his flight from arrest and subsequent attempt to hide Vaught's identity; and his own testimony at trial, combine to form the basis for a reasonable inference of complicity,

> even if the jury believed him to have been a passenger and not the driver.

Id. at 118-19, 187 S.E.2d 528. Appellant acted in concert with Jefferies at every turn – his complicity demonstrated strongest as he stopped or slowed Jefferies' car so Jefferies could fire multiple shots at the residence. The reasonable inference from the evidence is Appellant and Jefferies were acting together to burglarize and rob. It was just that Jefferies was tasked with leading the way into the house, armed with his pink gun.

In State v. Gilbert, 107 S.C. 443, 93 S.E. 125 (1917), members of the Gilbert family were defendants for the assault of a school principal who suspended Ruby Gilbert from school a few days prior to the assault. The principal and another teacher were on their way to a meeting when they were approached by the Gilberts. The women assaulted the principal, while the men, Rawton and Lawton Gilbert, stood around the teacher. Prior to the assault, the Gilbert men and women were seen conferring with each other, and then leaving together from the house where the meeting was to occur. The Supreme Court rejected the claim of insufficient evidence to convict Lawton and Rawton. The Supreme Court first observed:

> If several persons in pursuance of a common design to commit an unlawful act, whether it be a felony or misdemeanor, **set out together** or in small parties, and each takes the part agreed upon or assigned him, some to commit the act, **others to watch at proper distances and stations to prevent interference or surprise or to encourage the commission of the unlawful act** or to favor, if necessary, the escape of those immediately engaged in the commission of the unlawful act, under these circumstances, if the unlawful act is committed, the act of one is the act of all and all are presumed to be present and guilty; for this would be in pursuance of a common purpose in a common cause with them each operating in his station at one and the same instant to arrive at a common end. The act of each would tend **to give countenance, encouragement, and protection** to the whole gang and to insure the success of the common undertaking

in the commission of the unlawful act.

Gilbert, 93 S.E. at 125-26 (emphasis added). The Supreme Court found sufficient evidence, noting the following:

> [T]here was sufficient evidence in the case for the jury to say whether they gathered together for the unlawful, common purpose of assaulting and beating [the principal], and that the whipping was done in pursuance of that common design, and that all were present for the purpose of actually participating, or participating if necessary in carrying out their unlawful design. If they were there to carry out the unlawful designs in pursuance of a common design participating actually **or potentially** if necessary then all were guilty, the act of one was the act of all.

Id. at 126 (emphasis added). As in Gilbert, the evidence creates the inference that Appellant was at the ready to assist once inside Victim's residence and provide aid as necessary.

In the instant case, the State presented evidence of a burglary and attempted armed robbery in which the Victim met the burglars at the threshold of his house. Appellant does not challenge the sufficiency of evidence to prove the substantive offenses. Appellant and Jeffries came together to the house. They approached the door together – hoods on. Appellant was right behind Jeffries when he pointed the pink gun through the doorway. They left together when Victim yelled to his fiancé to call 911. Appellant drove Jeffries away from the house in Jeffries' vehicle. Appellant turned the car around in Mother's driveway, drove back to Victim's house, and stopped and slowed down in front of Victim's house to enable Jeffries to position himself to discharge a firearm into the house. They remained together after the incident, visiting a staffing agency together, followed by Appellant assisting Jeffries in finding work through a staffing agency he attended. Based on evidence he arrived with Jeffries, was available to participate in the burglary and attempted robbery as it unfolded, and provided countenance and assistance as their assault on Victim's house resumed with

gunfire from Jefferies' vehicle as Appellant drove, a reasonable juror could find Appellant aided and abetted Jefferies in the attempted burglary that was antecedent to Jeffries taking Victim's life.

CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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October 15, 2020

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Cherokee County
Honorable J. Denham Cole, Circuit Court Judge

The State of South Carolina,

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v.

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PROOF OF SERVICE

I, Shana Montgomery, certify that I have served the within Initial Brief of Respondent with Designation of Matter on Appellant by email to the address listed in AIS with a copy of the same to follow in the United States mail, postage prepaid, addressed to his attorney of record, Tommy Thomas, Esquire, Post Office Box 88, Columbia, South Carolina 29063

I further certify that all parties required by Rule to be served have been served.
This 15th day of October, 2020.

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From: Shana Montgomery
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Subject: State V. Shaun Rogers; Initial Brief of Respondent; Appellate Case No. 2019-001778
Attachments: 02403505.PDF

Good Afternoon,

Attached please find a copy of the Initial Brief of Respondent and Designation of Matter along with the proof of service for State v. Shaun Rogers (2019-001778). Please confirm receipt. This Initial Brief will be submitted to the South Carolina Court of Appeals today via the AIS One Drive System. In addition to the email, a hard copy will be placed in today's mail.

Thank You.

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