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following: (1) giving advice or counsel to another entity or person as to the legal rights of that entity or person or the legal rights of others for compensation, direct or indirect, where a relationship of trust or reliance exists between Respondent and the party to whom it is given; (2) selecting, drafting, or completing, for another entity or person, legal documents which affect the legal rights of the entity or person; and (3) representing another entity or person in a court, in a formal administrative adjudicative proceeding or other formal dispute resolution process, or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review. Noncompliance with this order of injunction shall constitute contempt punishable under this court's inherent power and § 3-1019.

INJUNCTION ISSUED.

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STATE OF NEBRASKA, APPELLEE, V.
MICHAEL L. ROSS, APPELLANT.
811 N.W.2d 298

Filed April 26, 2012. No. S-11-093.

1. **Evidence: Appeal and Error.** In reviewing a sufficiency of the evidence claim, whether the evidence is direct, circumstantial, or a combination thereof, the standard is the same: An appellate court does not resolve conflicts in the evidence, pass on the credibility of witnesses, or reweigh the evidence; such matters are for the finder of fact. The relevant question for an appellate court 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.
2. **Circumstantial Evidence: Words and Phrases.** Circumstantial evidence is evidence which, without going directly to prove the existence of a fact, gives rise to a logical inference that such fact exists.
3. **Circumstantial Evidence: Proof.** Circumstantial evidence is not inherently less probative than direct evidence, and a fact proved by circumstantial evidence is nonetheless a proven fact.
4. **Convictions: Juries: Circumstantial Evidence.** In finding a defendant guilty beyond a reasonable doubt, a jury may rely upon circumstantial evidence and the inferences that may be drawn therefrom.
5. **Verdicts: Appeal and Error.** Only where evidence lacks sufficient probative value as a matter of law may an appellate court set aside a guilty verdict as unsupported by evidence beyond a reasonable doubt.

Petition for further review from the Court of Appeals, INBODY, Chief Judge, and SIEVERS and MOORE, Judges, on appeal thereto from the District Court for Douglas County, PATRICIA A. LAMBERTY, Judge. Judgment of Court of Appeals reversed, and cause remanded with directions.

Thomas C. Riley, Douglas County Public Defender, Timothy P. Burns, and Brenda J. Leuck for appellant.

Jon Bruning, Attorney General, Kimberly A. Klein, and James D. Smith for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

STEPHAN, J.

Michael L. Ross was convicted by a jury of discharge of a firearm at a person, building, or occupied motor vehicle while in the proximity of a motor vehicle he had just exited, use of a deadly weapon to commit a felony, and possession of a deadly weapon by a felon. On direct appeal, the Nebraska Court of Appeals determined the evidence was insufficient to support Ross' convictions. We granted the State's petition for further review and now reverse the judgment of the Court of Appeals, because we conclude that the evidence, when considered under the deferential standard of appellate review, was sufficient to support the convictions.

## BACKGROUND

The following evidence was adduced at Ross' trial and pertains to the events of February 10, 2010. On that date, a shooting occurred in Omaha, Nebraska, on the block of North 33d Avenue, which is intersected by Erskine Street on the north and Grant Street on the south.

Lumonth Coleman and his girlfriend spent the morning moving out of a house located on North 33d Avenue. This is the first house south of Erskine Street on the east side of North 33d Avenue. Terrell Smith arrived at that location with his girlfriend, Tiffany Ross (Tiffany), around 9 a.m. Smith was driving a white Mercury Grand Marquis, which he parked

facing north on the east side of North 33d Avenue, directly in front of Coleman's house. Tiffany remained in the front passenger seat of the Grand Marquis while Smith began to help Coleman move items from the house to a van parked across the street.

At one point during the move, Coleman stepped onto the front porch of his house and saw a northbound two-door silver vehicle slowly swerve around the parked Grand Marquis. A passenger in the silver vehicle was facing backward, toward the south, holding a weapon that Coleman described as a silver .38- or .44-caliber revolver. Coleman first heard shots when the rear end of the silver vehicle was square with the front of the Grand Marquis. He heard approximately five or six shots, a very short pause, and then about nine additional shots. Coleman described the second set of shots as faster than the first and sounding like the shots were being fired from a different gun. The silver vehicle left the scene by continuing north.

Coleman ran outside and saw a red northbound vehicle farther south on North 33d Avenue. Coleman heard the driver yell, "I'm going to get you," followed by a string of expletives. The driver then backed up his vehicle down North 33d Avenue onto Grant Street. Coleman saw the driver stop and say something to a woman before leaving the scene.

Coleman walked south down North 33d Avenue and picked up two 9-millimeter shell casings, which he testified that he then threw and stomped on. He retrieved two more 9-millimeter casings and put them in his pocket. The casings were found near where Coleman had first seen the red vehicle on North 33d Avenue.

Smith was inside the house when the shots were fired. He heard four or five shots, a pause, and then seven to eight more shots. Smith testified that the seven or eight shots were fired back-to-back and were slightly louder than the first set. He went outside and saw that Tiffany had been shot. Tiffany sustained gunshot wounds to the front of her head and her arm. Smith drove her to a hospital, where she died about a month later.

Coleman's girlfriend was near the parked van in which items from Coleman's house were being loaded when the shots were

fired. She heard two shots and then eight or nine shots that were louder and came more rapidly. Following the second set of shots, she heard a voice say, "I'm going to get you," followed by several expletives.

Jasmine Pierce was at a residence located on the west side of North 33d Avenue, just south of Grant Street. After hearing what sounded like four or five shots, she stepped onto the porch. She saw a young man standing outside the driver's-side door of a vehicle that was facing north on North 33d Avenue. He was holding a gun and shooting north at what Pierce described as "her" vehicle. Pierce testified that a vehicle parked outside of a house that people were moving from separated the shooter's vehicle and another northbound vehicle located farther north on North 33d Avenue.

Pierce saw the shooter leave the scene by backing up his vehicle. He stopped in front of a house located on Grant Street, which is to the west of and adjacent to the house where Pierce was visiting. Pierce heard the shooter yell to a woman there to call "so and so" because people from "29th Street" were shooting at him. Pierce did not hear the shooter ask for the police to be called. The shooter then drove away on Grant Street. Pierce thought the shooting was gang related, because "29th Street" was a gang in Omaha. When asked about the color of the shooter's vehicle, Pierce testified that she could not remember and thought it could have been either red or white.

Lowell Berry, who lived about a block south of Pierce's location on North 33d Street, also heard the shots. From his kitchen window, Berry saw a woman running and a red vehicle near Grant Street with a man quickly moving toward it. The man was wearing a coat and came from the front of the vehicle. Berry observed the man enter the north-facing vehicle, back up on North 33d Avenue, and then drive away on Grant Street. Berry did not see who had fired the shots. Police took Berry to the area of North 14th Avenue and Pinkney Street later that morning, and Berry identified a vehicle at that location as the vehicle he had seen on North 33d Avenue. The vehicle was later identified as a maroon Chevrolet Impala.

At approximately 3:30 p.m., on February 10, 2012, Ross gave a statement to police. He said that he went to pick up his

girlfriend in the area of North 33d Avenue and Erskine Street earlier that day and that he was driving a maroon Impala. He parked in front of a blue house, and his girlfriend came to the car. He saw people moving items into a van up the street and said there was a vehicle parked in front of him, and then a white vehicle. A silver vehicle pulled up to the white vehicle, and someone in the silver vehicle started shooting. Ross heard the first shot after a man leaned out of the passenger-side window and turned around toward the white vehicle. Ross heard two different guns being fired and thought there were two people shooting.

Ross saw that the back window of the white vehicle was shattered and that a woman in the white vehicle was hurt. After reversing his vehicle, Ross yelled to a person in a nearby pink house that people from "29th Street" were shooting and to call the police because someone just got hurt. He left the scene by backing up his vehicle and going up Grant Street.

Ross said that he then drove to his grandfather's house near 25th Avenue and Pinkney Street. He briefly went inside, along with his girlfriend. While leaving his grandfather's house, Ross saw the vehicle from which the shots had been fired on North 33d Avenue. He identified the vehicle as a silver "G-six." Ross said people in the vehicle began to shoot at him, so he drove off toward North 14th Avenue and Pinkney Street.

Several people called the 911 emergency dispatch service to report someone in a silver vehicle chasing and shooting at a red vehicle. One caller saw shots fired from the silver vehicle, and another caller reported a vehicle "dumped" at a location on North 14th Avenue. The latter reported that two males had exited the "dumped" vehicle and were hiding behind a garage. This call was made from the area of North 14th Avenue and Pinkney Street, and the vehicle was later identified as a maroon Impala.

Ross said that the driver of the silver car ran him off the road and that its occupants started to chase him, so he ran behind a house. He said he approached a man who was standing outside and reported that people were trying to hurt him and his girlfriend and that he needed to call the police. Ross said the man went inside his house, so Ross went to a second

house and asked to call a tow truck. When he came outside, the police were there and Ross was arrested.

Ross denied ever having a gun or returning fire. Inspection of the Impala revealed a bullet hole in the driver's-side headlight and another in the trunk. At trial, the parties stipulated that Ross had a prior felony conviction.

Anthony Rivera lived on North 14th Avenue, near Pinkney Street. As he was returning to his home on the morning of February 10, 2010, he saw a vehicle in his yard. There were no passengers in the vehicle. Rivera called the police and then saw Ross and a woman come out from behind his garage, which was near a steep, wooded ravine that contained debris. Both persons were wearing big coats, and Ross was holding a shiny object which "looked exactly like a handgun clip." It appeared to Rivera that Ross was trying to conceal the object. Ross said his vehicle was stuck in Rivera's yard and asked for help in pulling it out. Rivera testified that Ross never asked him to call the police or mentioned that people were shooting at him. The vehicle in Rivera's yard was a maroon Impala.

When a police officer arrived at North 14th Avenue and Pinkney Street, he noticed Ross behind a house. Ross peeked around the corner and saw the officer, but then retreated behind the house.

Miguel Barajas lived nearby on North 14th Avenue. On the morning of February 10, 2010, Ross came to his door and asked to use a telephone to call a tow truck, explaining his vehicle had slid into someone's yard. When Ross was on the telephone, Barajas did not hear him mention anything about calling the police or needing help. Barajas observed a police officer come up his driveway and take Ross into custody.

Ross' hands were tested for gunshot residue, but the analyst could not give a definite opinion as to whether Ross had fired a weapon. The analyst explained that particles consistent with gunshot residue were found on Ross' hands but that none contained all three components necessary to definitively identify a particle as gunshot residue.

Several shell casings were found in the area of North 33d Avenue and Erskine Street, including several to the south of the house from which Coleman and his girlfriend were

moving. Two were identified as FC 9-millimeter Luger casings, and the rest were identified as WIN 9-millimeter Luger casings. "WIN" and "FC" are designations for Winchester and Federal Cartridge, which are popular ammunition brands. An ammunition holder and unfired FC 9-millimeter Luger rounds were found in the snow near where the Impala stopped in Rivera's yard. Rivera testified that no one in his household owned a 9-millimeter weapon and that there was no reason for 9-millimeter ammunition to be in his yard.

Three bullet holes were found in the Grand Marquis: one in the driver's-side door, one in the rear driver's-side "wing window," and one in the shattered rear windshield. An examiner determined that the holes in the wing window and rear windshield were made by rounds fired from outside the vehicle. These holes were consistent with someone's shooting from near the spot where the spent shell casings were found on North 33d Avenue, south of where the Grand Marquis was parked.

Several bullet fragments were also recovered from inside the Grand Marquis. A ballistics expert opined that the bullets recovered from the Grand Marquis were fired from at least two different weapons. Upon examination of the bullet fragments found in the Grand Marquis as well as bullet fragments found in Tiffany's body, a 9-millimeter weapon could not be ruled out as one of the weapons.

The jury convicted Ross on all counts. The court sentenced him to 5 to 20 years' imprisonment for discharge of a firearm at a person, building, or occupied motor vehicle; 5 to 20 years' imprisonment for use of a deadly weapon to commit a felony; and 3 to 10 years' imprisonment for possession of a deadly weapon by a felon. The sentences were to run consecutively, with credit for 329 days of time served on the discharge of a firearm conviction.

Ross appealed to the Nebraska Court of Appeals. In a memorandum opinion filed on September 27, 2011, the court concluded that viewing the evidence in a light most favorable to the State, the evidence was insufficient to support the jury's verdicts. The court reasoned:

> The evidence indicates that a witness saw a young man in a white or red vehicle shooting a gun at the Grand

> Marquis; that Ross was holding something shiny in his hand which "kind of looked like a handgun clip"; and that live ammunition was found outside of the red Impala. Other witnesses observed a man shooting from a silver car and ensuing in a chase with a red car, while still other witnesses saw nothing at all, but only heard two rounds of gunshots. Not one witness was able to identify that the shooter was actually in the red vehicle and no one identified Ross, at any time, as holding a gun, shooting a gun, or having possessed a gun during the events that unfolded on February 10, 2010.

The court further noted:

> [T]he testimony from the forensic experts was inconclusive. A gun was never located either at the scene of the shooting or during any subsequent search. The gunshot residue test of Ross' hands indicated that Ross may or may not have discharged a gun on February 10, 2010. No latent fingerprints were found and the testimony regarding the possible trajectories of the bullets, bullet casings, and the number of guns involved were also inconclusive and involved significant speculation as to what location the bullet fragments came from and what type of gun was used.

In conclusion, the court opined that the only evidence proved beyond a reasonable doubt was Ross' 2003 felony conviction. The court reversed Ross' convictions for discharge of a firearm at a motor vehicle, use of a deadly weapon to commit a felony, and possession of a deadly weapon by a felon. The State timely filed a petition for further review, which we granted.

## ASSIGNMENT OF ERROR

On further review, the State assigns error to the Court of Appeals' conclusion that the evidence was insufficient to support Ross' convictions.

## STANDARD OF REVIEW

[1] In reviewing a sufficiency of the evidence claim, whether the evidence is direct, circumstantial, or a combination thereof, the standard is the same: An appellate court does not resolve conflicts in the evidence, pass on the credibility of

witnesses, or reweigh the evidence; such matters are for the finder of fact.[1] The relevant question for an appellate court 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.[2]

## ANALYSIS

Ross was convicted of violating Neb. Rev. Stat. § 28-1212.04 (Supp. 2009), which at the time the shooting occurred provided:

> Any person, within the territorial boundaries of any city, incorporated village, or county containing a city of the metropolitan class or primary class, who unlawfully, knowingly, and intentionally or recklessly discharges a firearm, while in or in the proximity of any motor vehicle that such person has just exited, at or in the general direction of any person, dwelling, building, structure, [or] occupied motor vehicle . . . is guilty of a Class IC felony.

In accordance with this statute, the jury was instructed that the State had to prove beyond a reasonable doubt that (1) on or about February 10, 2010, Ross "discharged a firearm, while in the proximity of any motor vehicle that [Ross had] just exited, at or in the general direction of any person, dwelling, building, structure, or occupied motor vehicle"; (2) that Ross "did so in Omaha, Douglas County, Nebraska"; and (3) that Ross "did so intentionally or recklessly."

The State offered some direct evidence to prove its case against Ross. This included Ross' admissions to police that he was driving a maroon Impala on North 33d Avenue at the time the shots were fired into the white vehicle, that he was aware that the white vehicle was occupied by a woman, and that he was aware she had been injured by gunfire. This evidence placed Ross at the scene where shots were fired at an

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[1] *State v. McCave*, 282 Neb. 500, 805 N.W.2d 290 (2011); *State v. Nero*, 281 Neb. 680, 798 N.W.2d 597 (2011).

[2] *Id.*

occupied motor vehicle. From the testimony of witnesses who heard two sets of shots and the ballistics evidence summarized above, the jury could have concluded that at least two persons fired shots in the general direction of the white Grand Marquis. The critical question in this appeal is whether there is evidence upon which the jury could have concluded beyond a reasonable doubt that Ross was one of the shooters.

[2-5] As the Court of Appeals noted, no witness identified Ross by name as a shooter. The evidence on this point was primarily circumstantial. Circumstantial evidence is evidence which, without going directly to prove the existence of a fact, gives rise to a logical inference that such fact exists.[3] Circumstantial evidence is not inherently less probative than direct evidence,[4] and a fact proved by circumstantial evidence is nonetheless a proven fact.[5] In finding a defendant guilty beyond a reasonable doubt, a jury may rely upon circumstantial evidence and the inferences that may be drawn therefrom.[6] And as noted above, our standard of review for sufficiency of the evidence to support a conviction does not differentiate between direct and circumstantial evidence; we are required to view the evidence in the light most favorable to the prosecution and to refrain from reassessing the credibility of witnesses and reweighing the evidence.[7] Only where evidence lacks sufficient probative value as a matter of law may an appellate court set aside a guilty verdict as unsupported by evidence beyond a reasonable doubt.[8]

The record reflects that only two vehicles were in motion on North 33d Avenue at the scene of the shooting during the

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[3] *State v. Mowry*, 245 Neb. 213, 512 N.W.2d 140 (1994); *State v. Thompson*, 244 Neb. 375, 507 N.W.2d 253 (1993).

[4] *State v. Babbitt*, 277 Neb. 327, 762 N.W.2d 58 (2009); *State v. Leibhart*, 266 Neb. 133, 662 N.W.2d 618 (2003).

[5] *State v. Johnson*, 250 Neb. 933, 554 N.W.2d 126 (1996); *State v. Pierce*, 248 Neb. 536, 537 N.W.2d 323 (1995).

[6] *Leibhart, supra* note 4; *State v. Miner*, 265 Neb. 778, 659 N.W.2d 331 (2003).

[7] *McCave, supra* note 1.

[8] *Id.*; *State v. Davis*, 277 Neb. 161, 762 N.W.2d 287 (2009).

moments immediately before and after it occurred. One was the silver vehicle occupied by unidentified persons, and the other was the maroon Impala operated by Ross, who was the only male associated with that vehicle. The evidence supports an inference that at the time of the shooting, the Grand Marquis was situated generally between the silver vehicle to the north and the Impala to the south, with all three vehicles facing north. There is evidence that shots fired from outside the Grand Marquis entered its rear wing window on the driver's side and rear windshield. This is consistent with shots fired from the rear, or south, of the Grand Marquis.

Ross was 26 years old at the time of the shooting. Pierce testified that she observed a "young man" standing outside the driver's side of a vehicle "shooting towards her car." Although she did not recall the color of the shooter's vehicle, Pierce testified that the driver left the scene by backing up onto Grant Street and then driving away. Other witnesses testified that they observed someone backing up a red vehicle down North 33d Avenue and then onto Grant Street and driving away. Ross told police that he left the scene of the shooting by backing up his vehicle and driving away. There is no evidence of anyone backing up any other vehicle down North 33d Avenue immediately after the shooting. Pierce testified that the young man she had seen firing shots made a reference to "29th Street" as he left the scene. Ross told police that after backing up his vehicle down North 33d Avenue, he stopped near a pink house and shouted that people from "29th Street" were shooting at him. This evidence supports a reasonable inference that Ross was the young man Pierce observed firing shots in the general direction of the occupied Grand Marquis.

The subsequent events at North 14th Avenue and Pinkney Street further reinforce and strengthen this inference. Berry identified the Impala in Rivera's yard as the vehicle he had observed backing up on North 33d Avenue a short time earlier. Rivera observed Ross emerge from behind his garage, holding and attempting to conceal what appeared to be a handgun clip. Although Ross denied having a weapon, an ammunition holder and several unfired 9-millimeter Luger rounds were found in the snow near where the Impala came to rest in Rivera's yard.

Some of the spent shell casings recovered from the scene of the shooting were marked 9-millimeter Luger casings and were consistent with the live rounds found near the Impala. Rivera's testimony negated an inference that the ammunition holder and live rounds belonged to him.

In his statement to police, Ross said that he told persons at the North 14th Avenue and Pinkney Street location that he needed help because people were trying to harm him. But the testimony of Rivera and Barajas indicates that Ross asked only for assistance in removing the Impala from Rivera's yard and that he did not mention a shooting or request any police assistance. When Ross observed a police officer arriving at the scene, he retreated behind a house.

Viewing this direct and circumstantial evidence in a light most favorable to the prosecution, as our standard of review requires, we conclude that a rational trier of fact could have found that upon exiting the Impala, Ross unlawfully, knowingly, and intentionally or recklessly discharged a firearm in the general direction of the Grand Marquis in which Tiffany was seated and that these events occurred in Omaha, Douglas County, Nebraska. Accordingly, the evidence was sufficient to support Ross' conviction for unlawful discharge of a firearm in violation of § 28-1212.04 and his conviction for use of a deadly weapon to commit a felony in violation of Neb. Rev. Stat. § 28-1205(1) (Cum. Supp. 2010). The same evidence, together with the evidence of Ross' prior felony conviction, is sufficient to support his conviction for possession of a deadly weapon by a felon in violation of Neb. Rev. Stat. § 28-1206(1) (Supp. 2009). Accordingly, the Court of Appeals erred in reversing these convictions.

## CONCLUSION

For the reasons discussed above, the evidence was sufficient to support each of the three felony convictions challenged in this appeal. We reverse the judgment of the Court of Appeals and remand the cause to that court with directions to affirm the judgment of the district court.

REVERSED AND REMANDED WITH DIRECTIONS.