STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
The Honorable Walton J. McLeod, Circuit Court Judge

Appellate Case No. 2021-001405

THE STATE, Respondent,

v.

SHANTREZ ALEJANDRO ROBERTSON, Appellant.

INITIAL BRIEF OF RESPONDENT

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RESPONDENT'S COUNTER STATEMENT OF ISSUES ON APPEAL

I. Did the trial court err in denying the Appellant's motion for a directed verdict when ample evidence was presented revealing that the Appellant was involved in the crime, and the obligation of the court is to examine the existence of evidence and not its weight?

II. Did the trial court err in charging the jury the doctrine of, "a hand of one is the hand of all" when evidence presented revealed that the Appellant was present at the crime scene and was an active participant?

STATEMENT OF THE CASE

On February 8, 2016, Shantrez Alejandro Robertson (Appellant) was indicted by the Lexington County Grand Jury for the offense of murder and attempted murder. (Indictment Nos.: 2016-GS-32-000496, 2016-GS-32-00495).

On November 15, 2021, Appellant appeared before the Honorable Walton J. McLeod, III for a trial before a jury of his peers. The Appellant's trial was held simultaneously with his co-defendant Donovan Tirrell Brannon (co-defendant). Representing the Appellant was his counsel, David Michael Mauldin, his co-defendant was represented by attorney Robert T. Williams. Representing the State of South Carolina was Assistant Solicitor's Sutania Alicia Fuller, and Robert E. McNair, III of the Eleventh Circuit Solicitor's office.

After five days of testimony, a jury of his peers found the Appellant guilty of both offenses. (T. p. 1157 lines 20-25). After the verdict the Appellant appeared before the trial court. The trial court sentenced the Appellant to a thirty-two year period of incarceration for the offense of murder, and thirty years for the offense of attempted murder. The trial court ordered these sentences were to be served concurrently. (T. p. 1183 line 25 – p. 1184 line 2). While serving his sentence the Appellant filed a timely notice of appeal.

STATEMENT OF FACTS

On June 5, 2015, Brandon "Pedro" Jeffery (Jeffrey), O'Brien "OB" Gilliam (Gilliam), Tyrone "Shine" Gantt (Gantt), and Andy "Teddy P. Barnes (Barnes) were at a friend's house playing "Madden" on Playstation. (T. p. 131 line 10 – p. 132 line 11). Jeffrey's cousin Dominique "Dee Dee" Williamson (Williamson) came to the house telling them she was going to a party at "The Spot," a nearby club. (T. p. 134 lines 8-10). She wanted to know if they wanted to go to this club with her and they all agreed, so they all left for "The Spot." Driving to "The Spot" in her Dodge Charger was Williamson, riding with her was Jeffrey and Gilliam. Riding along with Barnes in his Dodge Stratus was Gantt. (T. p. 136 lines 10-11). Once they got to the club they all backed their cars up on a hill side by side. (T. p. 136 line 25 – T. p. 137 line 8). Each of them were allowed inside except Gantt. He was turned away because he had a firearm in his possession. (T. p. 481 lines 7-8). He got the keys from Barnes, walked back to the car to put the gun back into Barnes' vehicle. (T. p. 481 lines 13-18). Gantt walked back and was allowed to enter the club.

Inside, the co-defendant, was on the dance floor with some others dancing around, throwing up signs. (T. p. 139 25 – p. 140 line 2). Mr. Gilliam got into the middle and he was pulled off the floor by Jeffery. He then told Gilliam "we ain't here for that." (T. p. 140 lines 2-4). Both defendant's bumped Jeffrey, however, the co-defendant and Jeffrey did shake hands and greeted each other in a friendly manner. (T. p. 140 lines 6-10; p. 140 11-13). Jeffrey then walked out of the club, and once outside he saw the Gantt and Barnes. Jeffrey had a concerned look on his face and wanted to go home. (T. p. 487 lines 5-8). The other two wanted to stay, however, they felt that since they went there together, they should leave together. (T. p. 143 line 23 – p. 144 line 7). They then walked up to the hill to their cars. While waiting for Gilliam, the co-defendant walked up to them with a gun saying, "where them pussy niggas at?" (T. p. 145 line 2; T. p. 491 lines 20-

21). Along with the co-defendant were two other individuals, one, an individual described as wearing the identical clothing as the Appellant was found wearing that night. Gantt said, "who y'all looking for?" co-defendant answered "we ain't looking for you." (T. p. 143 line 23 – p. 144 line 7). The co-defendant and the Appellant then raised their hands and everyone heard gun fire. (T. p. 689 lines 1-14; T. p. 145 lines 8-10).

During the shooting Jeffrey was shot in both legs, he crawled under Williamson's Dodge Charger. (T. p. 149 lines 8-14). Barnes went back to his car, retrieved his gun and returned fire. (T. p. 496 lines 3-4). Co-defendant and the Appellant then got into a burgundy Grand Marquis and rode off. (T. p. 498 lines 10-12). After they left everyone helped Jeffrey from under the car and into the Dodge Charger. They looked behind Barnes car finding Gantt on the ground dead due to receiving multiple gunshot wounds. (T. p. 499 lines 1-4).

After being placed in Williamson's vehicle Jeffery was driven to the Hill View Truck Stop, where they called law enforcement. The first to respond was Deputy Daniel Schirra, of the Lexington County Sheriff's Department. Deputy Schirra spoke to Jeffery who told him that the Appellant killed Gantt. (T. p. 98 lines 15-16). Jeffery also told Deputy Schirra that the co-defendant and Appellant presented handguns and started shooting. (T. p. 98 lines 21 – p. 99 lines 15-16). Deputy Timothy Franklin also of the Lexington County Sheriff's Department responded, he witnessed Jeffrey with two gunshot wounds to both legs, one in the ankle and the other in the knee/ thigh area. (T. p. 105 lines 8-10). Jeffrey was then transported to Lexington Medical Center. While in the Emergency Room Deputy Franklin spoked to him, Jeffrey informed him that he was shot by Co-defendant and the Appellant. (T. p. 115 lines 21 – p. 116 line 4).

During the shooting the driver of the Grand Marquis, Antonio Stroman (Stroman), was shot in the neck. Defendant Co-defendant drove him to Creek View Apartments. During trial a

Ms. Demetrich Harris testified, she observed the Grand Marquis drive up with four individuals inside. (T. p. 235 lines 19-22). She saw two other cars and a truck also pulling up. (T. p. 237 lines 9-10). She also testified that she saw an individual get into the truck and left the scene. (T. p. 237 lines 15-17). Corporal Deepak Harpalani of the Batesburg-Leesville police department was called to the Creek View Apartments. Corporal Harpalani observed Stroman with a gunshot wound to the neck sitting in the rear passenger side of a burgundy Grand Marquis. (T. p. 244 lines 8-14; p. 245 lines 5-9). Corporal Harpalani also observed the co-defendant standing beside the vehicle. (T. p. 246 line 20 – p. 247 line 5).

Investigator Michael Phipps of the Lexington County Sheriff's Department was also called to Creek View Apartments to process the Grand Marquis. (T. p. 271 lines 18-24). While there he collected the co-defendant's cell phone and the co-defendant also submitted to a gunshot residue test. (T. p. 272 lines 4-10). Investigator Phipps observed some damage to the rear trunk and rear window which looked like projectile strikes. (T. p. 274 lines 20-22; 275 lines 1-3). Investigator Phipps also recovered a handgun near the Grand Marquis. (T. p. 275 lines 9-13). The gun that was recovered was an empty Ruger nine-millimeter. (T. p. 277 lines 8-9; T. p. 277 line 16). The co-defendant was then arrested for disorderly conduct.

Co-defendant was later picked up by Sergeant Shawn Spivey and driven to the Lexington County Sheriff's Department headquarters for questioning. After being given his *Miranda* rights Co-defendant informed Sergeant Spivey that he and Stroman went to "The Spot" together and while leaving they were shot at and he shot back in self-defense. He stated that during this shooting Stroman was shot in the neck. (Jackson v. Denno T. p. 58 lines 7-21). Co-defendant also admitted that the Ruger nine-millimeter was his gun, and that he threw the gun away as the police pulled up. (Jackson v. Denno hearing T. p. 61 lines 3-10). He identified it as the identical gun they found

near the Grand Marquis, which was later determined as one of the weapons matching cartridges found at the crime scene.

Appellant was later brought in for questioning. After being read his *Miranda* rights he informed law enforcement that he was with Stroman and the co-defendant at the incident location. Appellant stated that he along with the co-defendant got into a minor altercation with some other people. After that he wanted to leave so between 2:00am and 2:30am he called his girlfriend Ms. Jasmine Pringle (Pringle) to pick him up. Appellant told law enforcement that he got to her house around 3:15am. Both the Appellant and co-defendant were later arrested and charged with the offenses of murder and attempted murder.

ARGUMENTS

1. **Trial court did not err in denying Appellant his motion for directed verdict since ample evidence was provided proving the Appellant's guilt, and the court is obligated to look at the existence of evidence and not its weight.**

At the conclusion of the State's case, Appellant made a motion for a directed verdict. It was his position that the State failed to present sufficient evidence revealing he committed this crime. He was of the belief that this case should not be decided by a jury but that the trial court must end this case by the granting of a directed verdict. At the conclusion of the Appellant's motion the trial court stated, "I think there's evidence to send to this jury that is appropriate whether they find the burden of proof has been met is an entirely different matter. But I think that is ultimately the factfinders' decision in this case. These motions will be respectfully denied." (T. p. 1058 lines 4-9).

Standard of Review

In criminal cases the appellate court sits to review errors of law only. *State v. Wilson,* 345 S.C. 1, 5, 545 S.E.2d 827 (2001). 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. Morgan,* 352 S.C. 359, 364, 574 S.E.2d 203, 205 (Ct. App. 2002). On an appeal from the trial court's denial of a motion for a directed verdict, the appellate court may only reverse the trial court if there is no evidence to support the trial court's ruling. *State v. Lindsey,* 355 S.C. 15, 20, 583 S.E.2d 740, 742 (2003). When reviewing a denial of a directed verdict at the trial level, the appellate court, "views the evidence and all reasonable inferences in the light most favorable to the State." *State v. Bennett,* 415 S.C. 232, 235, 781 S.E.2d 352, 353 (2016). In criminal cases, the appellate court is bound by factual findings of the trial court unless an abuse of discretion is shown. *State v. Blackwell-Selim,* 392 S.C. 1, 3, 707 S.E.2d 426, 427 (2011). Trial court's decision will not be disturbed on appeal absent a clear showing of an abuse of discretion. *Mitchell Supply Co. v. Gaffney,* 297 S.C. 160, 162-63, 375 S.E.2d 321, 322-23 (Ct. App. 1988). An abuse of discretion occurs when the trial court's order is controlled by an error of law or when there is no evidentiary support for the trial court's factual conclusions. *Stokes – Craven Holding Corp. v. Robinson,* 416 S.C. 517, 536, 787 S.E.2d 485, 495 (2016).

Discussion

The Appellant argues that his directed verdict motion should have been granted due to the lack of evidence presented revealing he committed this crime. The State argues that ample evidence was presented so the trial court was obligated to allow the jury to make the decision of innocence or guilt. In order for this court to make a determination as to whether or not the trial court erred in the denial of a directed verdict, the State must present the evidence introduced during trial. This will reveal that the decision of the trial court denying the directed verdict was not made in error.

The trial started with testimony from Deputy Daniel Schirra of the Lexington County Sheriff's Department. Deputy Schirra was the first to respond to the Hill Valley truck stop and spoke to Jeffery. During Deputy Schirra's questioning of Jeffrey he was told that the Appellant shot Gantt. (T. p. 98 lines 15-16). Jeffery also told him that he saw the Appellant presenting a chrome and black handgun and the shooting began. (T. p. 98 lines 21 – p. 99 lines 3).

Jeffery testified that the Appellant was wearing white jogging pants with black stars. (T. p. 164 lines 5-7). Gilliam testified that walking up the hill with the co-defendant was a man wearing a white tee shirt, this was one of the men who raised his hand and then guns were firing. (T. p. 689 lines 1-14). Detective Brannon Marthers of the Lexington County Sheriff's Department testified that he pulled surveillance footage from the Hill View Truck stop, which is located about three minutes away from "The Spot"(T. p. 914 lines 21-23). This surveillance footage was from the incident date between 12:30am and 1:30am, (T. p. 908 lines 4-13) about two hours before the incident occurred. This footage revealed the co-defendant, Stroman, the Appellant and another individual Tyrese White getting out of a burgundy Grand Marquis. (T. p. 910 lines 1-3; p. 910 lines 6-7). In this footage the Appellant is wearing a white shirt, and white pants with stars. (T. p. 910 line 16; p. 910 line 21).

During trial Dr. Janice Ross forensic pathologist testified. She performed the autopsy on Gantt on June 8, 2015. (T. p. 610 lines 3-7). Dr. Ross determined that the Gantt's cause of death was a bleed out due to a perforation of both lungs due to a gunshot wound of the arm going through the chest. (T. p. 610 lines 12-15). Dr. Ross also testified that Gantt suffered five gunshot wounds. (T. p. 610 lines 19-21).

During the autopsy two projectiles were recovered from Gantt's body. (T. p. 610 lines 22-25). The bullet that went through his body and was removed from his left arm. (T. p. 613 lines 10-

16). The other gunshot wounds occurred in the upper thigh; the right thigh that went out the back of his leg; his right thigh and that went through and into his left thigh. Dr. Ross testified that due to the angle of this bullet Gantt was either walking or running when shot. The fifth wound was in his right buttocks and came out toward the middle of his body. (T. p. 614 line 10 – p. 616 line 14). Dr. Ross testified that Gantt was most likely standing with all these wounds coming fairly quickly. (T. p. 616 lines 24-25). She also testified that the entry point of wound number five was in the back of the body. (T. p. 620 lines 16-19).

During trial South Carolina Law Enforcement Division (SLED) agent Michelle Eichenmiller also testified. She was accepted by the trial court as an expert in the field of firearm identification. Agent Eichenmiller testified that she received sixty-six items of evidence of firearm analyses in relation to this shooting. (T. p. 549 lines 1-7). She also received three firearms, a Walther Model P22 semi-automatic which was associated with Gantt (T. p. 558 lines 10-15); a Jimenez Arms, model JA9 semi-automatic nine-millimeter pistol, this was associated with Barnes (T. p. 559 lines 19-25); and a Ruger model L9 semi-automatic nine-millimeter, this was the gun found at the Creek View apartments that the co-defendant admitted to law enforcement was his (T. p. 560 lines 2-9).

Agent Eichenmiller also testified that of the sixty-six items submitted, forty-one were shell cartridges from bullets fired at the scene. In her analysis the P22 belonging to Gantt did not match any of the submitted shell cartridges. (T. p. 559 lines 6-7). Of those cartridges there were four firearms involved, two were missing. (T. p. 602 lines 4-11). Of the forty-one cartridges that were fired fifteen were fired from the same gun, a nine-millimeter Smith and Wesson. (T. p. 602 lines 12-16). The round found in the left arm of Gantt was also from a nine-millimeter Smith and Wesson. (T. p. 565 lines 14-20). According to the testimony of Dr. Janice Ross this was the fatal

round. This round did not match the P22, nine-millimeter associated with Barnes or the nine-millimeter found at the Creek View Apartments. (T. p. 566 lines 2-7).

According to the testimony of Detective Marthers, on June 4, 2015, at 10:11 pm, a couple of days before the murder occurred, Appellant sent a text to a Trenton Sampson. This text stated, "I got a Smith and Wesson nine-millimeter brand new 17 shots." (T. p. 9904 lines 1-19). On June 5 at 3:49pm only hours before the murder the Appellant received a text, "How much you want for the nine-millimeter." At 3:51pm the Appellant responded "$250." (T. p. 894 lines 3-8).

Lexington County Deputy Todd Garrick interviewed Antonio Stroman. Mr. Stroman was the individual that was shot in the neck while driving the co-defendant and Appellant away from the crime scene. Deputy Garrick questioned Stroman at the hospital where he gave two different stories. Due to their investigation Deputy Garrick was aware that Stroman was not being totally honest. Therefore, Deputy Garrick decided to speak with Stroman again at his home. That is when he finally decided to tell the whole truth about what occurred.

Stroman informed Deputy Garrick that at the club he was parked in the lower parking lot. Since he worked all day he told the co-defendant and Appellant that he was leaving. Stroman stated that he got into his car alone around 2:50am and began leaving out of the parking lot. He stated that he had to drive slowly because of people walking and cars. Then he heard gun shots and then he heard the co-defendant telling him to stop the car and that is when the co-defendant and the Appellant got into his car. Stroman's car got stuck in mud, and after he got it unstuck he heard more gunshots and his back glass break. When he got to a stop Stroman felt his neck and realized he was shot. Stroman began yelling for help and got into the backseat. That is when the co-defendant got into the driver's seat and Appellant into the passenger seat. They drove to Creek View Apartments. (T. p. 817 line 12 – p. 818 line 15).

Appellant's girlfriend Jasmine Pringle also testified. She stated that she got a phone call from the Appellant after midnight. When asked if it was at 4:18am she stated that she will not dispute that because she does not remember exactly what time it was. (T. p. 854 line 25 – p. 855 line 9). She testified that Appellant called her and told her to meet him at "The Spot." However, she never went to the club to pick him up. (T. p. 853 lines 10-13). She cannot remember where she picked him up but it was off a country road where there were no police present. (T. p. 850 lines 10 – 15). She picked up the Appellant and a friend that went by the name of "Boosie." Law enforcement later determined that "Boosie" was another co-defendant Tyrese White. Ms. Pringle testified that she took them to her house, she did not remember if Mr. White stayed, but he did come to her house. (T. p. 854 lines 17-18).

Ms. Pringle's cousin Adrian Parker also testified. Ms. Parker testified that on the night of the shooting she was spending the night with Ms. Pringle at her residence. Ms. Parker is a nurse at Lexington Medical Center, so she had to be at work at 7:00am. She got up at around 5:30am, and when Ms. Pringle got back with the Appellant and Mr. White, she was upstairs getting dressed. (T. p. 869 line 20 – p. 870 line 7). She knew that they got back to Ms. Pringle's apartment between 5:30am and 6:00 am because she usually leaves at 6:00am. (T. p. 870 lines 10-11).

The Appellant gave a statement to Detective Marthers. Within this statement the Appellant informed Detective Marthers that he phoned Ms. Pringle between 2:00am and 2:30am asking her to pick him up from the club. (T. p. 875 lines 6-8). He stated that they got back to her apartment around 2:45am and 3:15am. (T. p. 875 line 9). This would give him an alibi because the incident occurred around that time.

However, this statement was not true. Testimony from Ms. Parker stated that they did not get back to Ms. Pringle's apartment until between 5:30am and 6:00am. FBI Special Agent Robert

Clayton Simmons also testified. Agent Simmons was admitted as an expert in the analysis of historical cell phone records. Agent Simmons analyzed the cell phone records of the Defendants and Ms. Pringle. Agent Simmons determined that Ms. Pringle phone had no activity between 11:56pm on June 5 and 4:31am on June 6. (T. p. 1017 lines 20-22). Agent Simmons also testified that the Appellant sent a message to Ms. Pringle at 4:11am on June 6, and it was not actually received until 4:28am. (T. p. 1019 lines 15-16; p. 1020 lines 1-6). Agent Simmons also examined the cell towers and the times that calls or activity from these cell phones were pinged to nearby towers. He testified that Ms. Pringle phone utilized the tower near her apartment between 4:00am and 4:59am. (T. p. 1018 lines 15-19). Ms. Pringle's phone utilized the tower near I-20 and U.S. 1 at 5:06am. And it was back at her apartment at 5:56am. (T. p. 1022 lines 7-12).

Detective Marthers obtained a search warrant for the phones of all the individuals involved with this incident. With this subpoena he was able to obtain text conversations between the Appellant and the other persons involved. During his testimony Detective Marthers testified that there was a text message from the Appellant to Ms. Pringle on June 6, the day after the incident which stated, "Baby, when your people leave, I need a place to stay to lay low for a while." (T. p. 893 lines 13-23). On June 8 Mr. Stroman texted the Appellant, "Y'all ain't leave or shot in the car did y'all?" (T. p. 896 lines 22-24). A text on June 8 to the Appellant from another girlfriend Ms. Anija Sales which said, "Tonio said y'all need to lay low. The detective said something about my name today." (T. p. 898 lines 1-4).

The Appellant was charged with the offenses of murder and attempted murder. Murder is defined as the killing of any person with malice aforethought, either expressed or implied. S.C. Code Ann. §16-3-10 (2015). Attempted murder is defined as a person with the intent to kill

attempts to kill another person with malice aforethought, either expressed or implied. S.C. Code Ann. §16-3-29 (2015). Malice is a major element of both offenses.

In the South Carolina Supreme Court case of *State v. Heyward,* 197 S.C. 371, 15 S.E.2d 669 (1941) malice was define as:

> A wicked condition of the heart. It is a wicked purpose. It is a performed purpose to do a wrongful act, without sufficient legal provocation; and, in this case it would be an indication to do a wrongful act which resulted in the death of this man without sufficient legal provocation, or just excuse or legal excuse. In its proper sense term "malice" conveys the meaning of hatred, ill-will or hostility toward another. In its legal sense, however, as it is employed in the description of murder, it does not of necessity import ill-will toward the individual injured, but signifies rather general malignant recklessness of the lives and safety of others, or a condition of the mind which shows a heart regardless of social duty and fatally bent on mischief; in other words, a malicious killing is where the act is done without legal justification, excuse, or extenuation, and malice has been frequently, substantially so defined as consisting of the intentional doing of a wrongful act toward another without legal justification or excuse.

Heyward, 15 S.E. 2d at 671, *quoting, State v. Gallman,* 79 S.C. 229, 60 S.E.2d 682, 686 (1908). In *State v. King,* 422 S.C. 47, 810 S.E.2d 18 (2017), the South Carolina Supreme Court decided that, "the Legislature intended to require the State to prove specific intent to commit murder as an element of attempted murder." *King,* 422 S.C. at 55, 810 S.E.2d at 22.

Evidence raised by the State reveals that Gantt was killed and Jeffery seriously injured at the hands of the Appellant and his co-defendants. There was an intent to kill and this crime was conducted maliciously. Both Jeffrey and Gilliam informed law enforcement that the Appellant shot during the incident. Appellant lied to law enforcement about his whereabouts when the murder occurred, and he was wearing the outfit that was described as being worn by one of the individuals at the scene. There is also evidence that a nine millimeter Smith and Wesson was the weapon that fired the fatal shot. Right before the incident, the Appellant was publicly selling the exact type of weapon. There was also texts between the Appellant and other individuals asking him to "lay low"

and if he "shot in the car." There was sufficient evidence for this case to go to the jury. If there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, we must find the case was properly submitted to the jury. *State v. Buckmon,* 347 S.C. 316, 321, 555 S.E.2d 402, 404 (2001).

The Appellant argues that there was no direct evidence submitted by the State. Circumstantial and direct evidence inherently possess the same probative value. *State v. Cherry,* 361 S.C. 588, 600, 606 S.E.2d 475, 483 (2004). Though this case primarily relies on circumstantial evidence, the amount of evidence presented linking the Appellant to the crime is overwhelming. When a motion for a directed verdict is made in a criminal case where the State relies exclusively on circumstantial evidence, "the trial judge is required to submit the case to the jury if there is any substantial evidence which reasonably tends to prove guilt of the accused, or from which his guilt may be fairly and logically deduced." *State v. Lollis,* 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001), *quoting, State v. Mitchell,* 341 S.C. 406, 535 S.E.2d 126 (2000).

The trial court was correct, its his duty to be concerned with the existence of evidence not its weight.[1] (T. p. 1057 lines 15-16). The trial court was right, there was more than one inference that could be deduced. (T. p. 1058 lines 22-23). If evidence of guilt exists, and that evidence was properly presented, it is the duty of the trial court to allow the jury to make a final decision as to the facts presented in order to make a determination as to innocence or guilt. That determination cannot and should not be taken away by the trial court.

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[1] On motion of the defendant or on its own motion, the court shall direct a verdict in the defendant's favor on any offense charged in the indictment after the evidence on either side is closed, if there is a failure of competent evidence tending to prove the charge in the indictment. In ruling on the motion, **the trial judge shall consider only the existence or non-existence of the evidence and not its weight.** Rule 19 SCRrimP. (emphasis added).

2. **The trial court did not err in charging the jury on the law of "a hand of one is the hand of all," evidence was presented revealing that the Appellant was present with the co-defendant and actively participated in the crime.**

The Appellant argues that the trial court erred in charging the jury on the doctrine of, "the hand of one is the hand of all." The State presented evidence revealing that the Appellant was present during the commission of this crime, and could have actually fired the fatal shot. The Appellant entered the scene with his co-defendants and was firing a weapon. This constitutes accomplice liability or "a hand of one is the hand of all." The trial court was within their duty to charge the jury concerning that law as well as mere presence. This allows the jury to apply the facts presented and determine if he was an accomplice or just merely present at the scene when the murder and attempted murder occurred.

Standard of Review

Under the "hand of one is the hand of all" theory of accomplice liability, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate identical to the execution of common design and purpose. *State v. Thompson,* 374 S.C. 257, 261-262, 647 S.E.2d 702, 704-05 (Ct. App. 2017). In reviewing jury charges for error, the court considers the trial court's jury charge as a whole and in light of the evidence and issues presented at trial. *State v. Logan,* 405 S.C. 83, 90, 747 S.E.2d 444, 448 (2013). The court should charge the jury with only the law applicable to the case. *State v. Lee,* 298 S.C. 362, 364, 380 S.E.2d 834, 835-36 (1989).

Discussion

Appellant argues that the trial court erred in charging the jury on the doctrine of "a hand of one is a hand of all." It is his position that the State never proved that there was ever an agreement between parties to commit this crime. The evidence presented revealed that the Appellant walked

up the hill with his co-defendants. One witness stated that the Appellant had a weapon and they all began shooting. This evidence should prompt the court to charge the jury on the "hand of one is the hand of all." In reviewing jury charges for error, the court must consider a jury charge as a whole in the light of the evidence and issues presented at trial. *State v. Brandt,* 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011).

During trial there was testimony that the co-defendant walked up the hill with other individuals. (T. p. 492 line 14; T. p. 684 lines 21-22). There was also testimony that the Appellant also had a gun and shots came from their general direction. (T. p. 145 lines 8-10; T. p. 689 lines 1-14). Through text messages there is evidence that the Appellant was trying to sell a nine millimeter Smith and Wesson just hours before the incident. (T. p. 894 lines 3-8; T. p. 904 lines 1-19) Ballistic tests revealed that a nine millimeter Smith and Wesson fired fifteen shots at the scene. (T. p. 578 lines 12-17). A nine millimeter Smith and Wesson bullet also went into one of Gantt's arm and through his chest causing massive bleeding which eventually caused his death. (T. p. 613 lines 10-16; T. p. 565 lines 14-20). This evidence reveals that the Appellant was not only present, but was an active participant, and possibly the actual killer. The doctrine of "a hand of one is the hand of all," was created for such cases as this one.

The Appellant argues that even assuming *in arguendo* that he was seen at the top of the hill no one saw him pull a trigger and that the evidence revealed that he was simply present at "The Spot" that night. The State does concede that if he was only present then the jury charge would not be lawful, however, ample evidence was presented revealing that the Appellant was not only present but an active participant in the crime. Mere presence and prior knowledge that a crime was going to be committed, without more, is insufficient to constitute guilt. However, presence at the

scene of a crime by pre-arrangement to aid, encourage, or abet in the perpetration of the crime constitute guilt as a [principal]. *State v. Harry,* 420 S.C. 290, 299, 803 S.E.2d 272, 277 (2017).

There was testimony that the Appellant walked up the hill with his co-defendant. So he was present and supporting the co-defendant when he was walking up the hill with a gun yelling at the victims. The bullet from the type of gun the Appellant was selling just the day before was also found inside Gantt, who was just there standing before them unarmed. There were also fifteen shells from this same particular type of weapon found at the scene. There was sufficient evidence that the Appellant was present and assisted in this shooting. Co-combatants who aid and incite one another to engage in the fight that leads to death or injury of an innocent bystander are equally criminally liable. *State v. Young,* 429 S.C. 155, 164, 838 S.E.2d 516, 521 (2020).

There was a substantial amount of evidence revealing that the Appellant was an active participant along with his two other co-defendants. These actions amount to the Appellant either being a co-conspirator or the actual person that fired the fatal shot. When actual evidence reveals that accomplice liability existed the trial court is obligated to charge the jury on that law. In reviewing jury charges for error, the Appellant court must consider the court's jury charge as a whole in light of the evidence and issues presented at trial. *State v. Marin,* 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016).

The trial court did the right thing by instructing the jury on the "the hand of one is the hand of all." The facts of the case demanded this, so this court should affirm that decision. To warrant reversal, the jury charge must be both erroneous and prejudicial to the defendant. *State v. Burkhart,* 350 S.C. 252, 261, 565 S.E.2d 298, 303 (2002). An appellant court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion. *State v. Pittman,* 373 S.C. 327, 570

S.E.2d 144 (2007). A jury charge that is substantially correct and covers the law does not require reversal. *State v. Faust,* 325 S.C. 12, 16, 479 S.E.2d 50, 52 (1996).

CONCLUSION

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

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August 17, 2022
Columbia, South Carolina

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
The Honorable Walton J. McLeod, Circuit Court Judge

Appellate Case No. 2021-001405

THE STATE, Respondent,

v.

SHANTREZ ALEJANDRO ROBERTSON, Appellant.

PROOF OF SERVICE

I, **Donna D'Alessio**, am an employee of the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Initial Brief of Respondent, Designation of Matter, and Proof of Service has been forwarded to Appellant's counsel, Elizabeth A. Franklin-Best, Esq., via email today, August 17, 2022 to elizabeth@franklinbestlaw.com.

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

This 17th day of August, 2022.

s/ Donna D'Alessio
Donna D'Alessio,
Legal Assistant to Tommy Evans, Jr.,
Assistant Attorney General

Donna D'Alessio

From: Donna D'Alessio
Sent: Wednesday, August 17, 2022 11:22 AM
To: 'elizabeth@franklinbestlaw.com'
Subject: Robertson, Shantrez A. - Appellate Case No. 2021-001405 - Initial Brief of Respondent, Designation of Matter and Proof of Service
Attachments: Robertson, Shantrez A. - Appellate Case No. 2021-001405 - Initial Brief of Respondent, DOM Proof of Service 8-17-22 (03077611xD2C78).pdf

Dear Ms. Franklin-Best:

Attached is a scanned copy of the Respondent's Initial Brief, Designation of Matter and Proof of Service regarding the above matter. The Initial Brief and supporting documents are being submitted to the South Carolina Court of Appeals through e-filing, along with a copy of this email.

Hope you are well.

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