

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. Supreme Court

Appeal From Beaufort County
The Honorable Thomas W. Cooper, Jr., Circuit Court Judge
Appellate Case No. 2012-213691

THE STATE,

Respondent,

vs.

KENNETH SAMMY WILLIAMS,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S STATEMENT OF ISSUES ON APPEAL

1. Did the Court of Appeals err in affirming the trial court's instruction to the jury on the theory accomplice liability where the prosecution failed to present any evidence that Petitioner aided and/or abetted his codefendant in the commission of the crime?

2. Did the Court of Appeals err in affirming the trial court's erroneous refusal to charge involuntary manslaughter because there was some evidence that the victim was unintentionally killed as a result of a fight arising out of a failed transaction regarding prostitution?

RESPONDENT'S COUNTER-STATEMENT OF ISSUES ON APPEAL

- I. Did the Court of Appeals correctly affirm the trial judge's decision to charge the jury on accomplice liability, since there was some evidence that supported the submission of this theory to Williams' jury?

- II. Did the Court of Appeals correctly affirm the trial judge's refusal to instruct the jury on the lesser-included offense of involuntary manslaughter because there was no evidence presented to support either prong of the requested charge?

STATEMENT OF THE CASE

The Beaufort County Grand Jury indicted Petitioner, Kenneth Sammy Williams (Williams) in October 2007 for murder (07-GS-07-1918, **R. pp. 442-43**), burglary in the first degree (07-GS-07-1920, **R. pp. 446-47**) and strong arm or common law robbery (07-GS-07-1918, **R. pp. 444-45**). These charges arose from the death of eighty-one year old Jack Koch in his residence, following a beating and robbery, in the early morning hours of September 9, 2007. Fourteenth Circuit Chief Public Defender Gene G. Hood represented Williams in the trial court. Fourteenth Circuit Assistant Solicitors Angela McCall-Tanner and James John Bannon prosecuted the case.

On July 26-29, 2010, Williams received a jury trial before the Honorable Thomas W. Cooper, Jr.¹ Judge Cooper refused to instruct the jury on involuntary manslaughter, and the jury convicted Williams, as charged. Williams received concurrent sentences of thirty years imprisonment for murder; thirty years imprisonment for burglary in the first degree and fifteen years imprisonment for strong arm robbery. **R. p. 436.**

A timely notice of appeal was served and filed. The Court of Appeals affirmed his convictions and sentences in an unpublished opinion, *State v. Kenneth Williams*, 2012-UP-573 (S.C. Ct.App., filed Oct. 24, 2012). **App. 1-2.** Williams filed a timely petition for rehearing. **App. 3-7.** The Court denied rehearing on November 30, 2012. **App. 8.**

STATEMENT OF FACTS

The direct and circumstantial evidence presented at trial was as follows:

1. The victim is discovered and the investigation begins.

In September 2007, James Koch was living with his eighty-one year old father, Jack Koch,

¹Initially, his case was set for a joint trial with his co-defendant, Timothy Clint Skinner, but Judge Cooper granted the defense's motion for a severance.

at his father's Port Royal (Beaufort County), South Carolina residence.² Jack was retired from Westinghouse, and he received a pension and Social Security. He also had a modest income from a Beaufort restaurant in which he was a silent partner. James testified that Jack "liked walking around money." He would usually carry between \$ 100.00 and \$ 200.00 in a gold money clip. He also carried a wallet "in his right back pocket." **R. pp. 24-25; 27-28; 34; 36.**

When James left to go to work around 4:00 p.m. on September 8, 2007, his father was asleep and no one else was in the house. However, when James return home around 2:00 a.m. on September 9th, the storm door to the front porch was not shut, which was unusual because his father "was adamant about having that door shut, which was a habit of his." Also, the front door was slightly ajar, which was also unusual. When James walked into the house, he saw Jack laying on the floor of the entryway into the kitchen and "in a pool of blood." **R. pp. 28-31.** Jack was unresponsive and was cold to the touch, but James thought there was a pulse and he called 911. Unfortunately, he was dead when EMS personnel arrived. **R. pp. 16-23.** There was no blood on the front porch when James left for work. **R. p. 31.** Also, Jack was so embarrassed that his home was so cluttered that he would not invite visitors into it. **R. p. 32.** James had seen Williams doing yard work at Jack's residence on two occasions, the latter of which was on Friday September 7, 2007. Jack told James that he was giving Williams a ride home on the 7th.³ **R. p. 38.**

Det. John Griffin was in charge of the Port Royal Police Department's investigative division in 2007. He and his partner, Det. Ronald Wekenmann, processed the victim's residence on the

² James was working as a manager in a Savannah, Georgia, restaurant.

³ Jack owned a truck. However, he normally did not drive "a lot of places." **R. p. 38.** When police allowed James back into his father's residence on Sunday afternoon, September 9th, he discovered two tickets that had been issued to his father on the 7th. James brought this to the attention of the Port Royal Police Department. Finally, James was not shocked to hear that his father might be interested in "meeting" women because his father was healthy, had been in the merchant marine and had been widowed for a decade. **R. pp. 32-34.**

morning of September 9th.⁴ When the officers canvassed the neighborhood to determine whether anyone heard or saw anything on September 8th-9th, some neighbors said that someone meeting Williams' physical description had done yard work for them. After James Koch provided Det. Griffin with the September 7th ticket Jack had received for having an expired tag and the warning ticket, Det. Griffin saw that the warning ticket indicated gave a physical description of a black male who fit the description that James had given of the man doing work for his father that day. Thereafter, the officers viewed the video that the deputy had taken of the traffic stop. They then viewed a person later identified as Kenneth Sammy Williams. Because James said that his father was not a very social person, the officers thought that this was significant information and decided to find and interview Williams. **R. pp. 100-04.**

Det. Wekenmann eventually found Williams in front of his Beaufort County home, cleaning a pair of tennis shoes in a bucket of soapy water. Det. Wekenmann relayed this information to Det. Griffin and remained at Williams' residence until Det. Griffin arrived. Because Williams had gone into his residence, the officers knocked on the door. Williams came to the door, with a soapy and wet pair of shoe strings in his hands. Det. Griffin explained that he was investigating a theft on 16th St. and Williams agreed to talk to the officers at the police department. **R. pp. 40-42; 103-05.**

2. Williams' first (September 10th) statement.

⁴ They found Jack Koch laying on his left side, face down. His body was in the living room but his head was in the kitchen. His bloody shirt was pulled up over his waist, and three buttons that were found in the living room had popped off of it. Also, his trousers were pulled down exposing his buttocks; and his right rear pants pocket had been torn. *See* State's Exhibit 13. There was a battery cover to a cordless phone with blood on it (see State's Exhibits 6-7), a battery to the phone (see State's Exhibit 8) and a pair folded glasses underneath him. Other than the phone cradle, the officers never recovered the remaining portions of this phone, which the victim had usually kept with him. **R. pp. 26-27; 61; 65-66; 72-86; 97.** The officers also did not find a wallet at the scene. **R. pp. 83-84.** Nor did they ever find the money clip that James had described. *R. p. 159.* However, they did find a closet door with a 2.5" to 3" impression in it. The victim's hair was embedded in it. They swabbed a blood stain that was on the living room floor immediately inside the front door, and they swabbed the doorknob of the front door for possible DNA. On the front porch and the steps to it, they found droplets of blood, which they swabbed. They likewise swabbed a drop of blood that they found in the driveway. Also, they found a "clear plastic wallet insert" on the porch. **R. pp. 96-98; 143-44.**

At the police department, Williams asked "is this about the guy in the blue truck?" When Det. Griffin asked what he meant by this comment, Williams inquired about the location of 16th St. Det. Griffin told him that 16th St. was a few blocks from the department. Griffin also told Williams that "We were given information that you . . . had done some yard work or whatnot for the old man, and that's when he got into, you know, oh, yeah, I know who, who you're talking about." Det. Griffin testified that Williams' statement was difficult to follow because he would get confused as to dates and, despite describing Williams as "forthcoming at that point, Det. Griffin felt that he was being "somewhat evasive" about his activities on September 7th. **R. pp. 41; 47; 105-06.**⁵

3. Further investigation.

Det. Griffin recalled that blood drops were found at the scene and realized that the blood could belong to a potential suspect. So, Det. Griffin asked Williams if he would allow the officers to take "some cheek swabs," which Griffin hoped to use for DNA testing. Initially, Williams agreed. However, he changed his mind before the swabs were taken because he did not trust the officers and he told them, "if I had an attorney here, I'd be more than glad to do that." Shortly thereafter, he invoked his right to counsel and he was permitted to leave. **R. pp. 42; 111-12.**

Officers later executed a search warrant at Williams' residence but did not find the tennis shoes he cleaned on September 10th. Officers also obtained the clothing that Williams claimed that he wore on September 8th. There was nothing of evidentiary value on the clothing. **R. pp. 58-59; 62-**

⁵ Williams first said he had raked the victim's yard on Saturday. Then, changed this to Friday. He also gave the street names of several people he had supposedly visited on Friday, but he did not give any names. After Det. Griffin told Williams that the officers knew "he was with the victim on Friday because he had been pulled over by a deputy," Williams said "oh, yeah, . . . [m]e and Mr. Koch were out in the Burton area. And as we were coming back from 88 Burton into Port Royal, we got pulled over by the, by the deputy." Williams claimed that Jack had wanted "the services of a . . . female" and they were looking for one willing to have sex with him. **R. pp. 47-48; 106-08; 134-36.** Williams claimed that the victim had dropped him off at a park near the naval Hospital and he went to the home of Timothy Clint Skinner, where he "partied." He also gave the officers the names of Skinner, Jenny and Lisa, as the people with whom he associated the night of September 7th. The officers noticed a "pretty fresh cut" on his left middle finger, which they photographed. (State's Exhibit 47). When Det. Griffin asked how he cut himself, Williams claimed that he cut it on a thorn while doing yard work at a lady's house. **R. pp. 41-42; 45; 108-12.**

63; 112-13. Officers learned that Skinner owned a white van, and they found one of the women whom Williams had mentioned, Jenny Chase, driving it. She was arrested on other charges and the van was impounded. In a search of the van pursuant to a warrant, officers discovered “a lot of trash items,” such as liquor bottles and beer cans. However, they also found a bloodstain on the passenger side of the rear (bench) seat, and they took a swab of it. (State’s Exhibit 46). On the center “hump” in the van and in close proximity to this stain, they found a Bank of America account card with the numbers for the victim’s checking and savings accounts on it.⁶ **R. pp. 54-55; 113-19; 124-25.** The officers also obtained DNA buccal swabs from Williams. The results of the DNA testing, discussed *infra*, provided them with probable cause to arrest Williams and they arrested him on September 19th. **R. pp. 42-44; 118-120; 125.**

4. Williams second statement pointing the finger at Skinner.

Because he had previously invoked his right to counsel during the September 10th interview, the officers did not question him. Although he voluntarily made the unsolicited remarks that “I’m not going down for this” and “a man named Skinner had done it” while they were booking him, the officers still did not question him. When he said that he wished to talk with them without a lawyer present, however, the officers agreed return to the jail that afternoon to speak with him and they did so. **R. pp. 42-44; 48-49; 118-20; 125.** After the officers advised Williams of his *Miranda v. Arizona*, 384 U.S. 436 (1966) rights and secured a waiver thereof from him, he gave a statement.⁷ **R. pp. 120-22; 125.** Williams began by saying that

he had met up with Skinner earlier Saturday afternoon. They decided that they were

⁶ There was not any activity on these accounts following the victim’s death.**R. p. 117.**

⁷ Although the statement was tape recorded, the tape recording was very garbled. Fortunately, Lt. Griffin took notes summarizing this statement and he was able to testify using his notes to refresh his memory when needed.**R. pp. 120-22.**

going to party that night. So, they went over to a girl named Lisa's house and picked her up from her house at Dixie Mobile Home Park. They then went back to Skinner's house, partied for a while, and then they decided that they needed to get some more money. So, they were going to go to Mr. Jack's house.

* * * *

They went in Skinner's white van. He . . . gave me names of Lynn or Linda was the driver of the van. She was later identified as Jenny Chase. Skinner was in the front seat, front passenger seat, Lisa was in the rear seat behind the driver, and he was in the rear seat behind the passenger.

R. pp. 125-26. Williams claimed that Jenny, Skinner's girlfriend, was going to provide the victim with the sexual entertainment that the victim had earlier requested. **R. pp. 156-57.**

Williams said that they arrived at the victim's residence sometime between 10:00 p.m. and midnight. **R. pp. 50-51; 126.** They pulled in behind the entrance to the driveway. Then, he, Skinner, and Jenny got "out of the van and went up to the door." Lisa stayed in the van because she was so intoxicated. Williams, Skinner and Jenny knocked on the door. The victim opened the door, asked them why they were there, and there was a conversation between Skinner and the victim. **R. pp. 126-27.** Although Det. Griffin did not recall Williams' explaining what caused it, "all of a sudden, Skinner went off and started attacking the [victim]." Also, "once . . . Skinner started hitting the . . . victim," Williams claimed that "he kept telling [Skinner] come on, man, let's go, let's just go, let's just go." **R. p. 127.** *See also R. pp. 157-58.* Further,

he indicated that once Timmy started attacking [the victim], he saw the [victim] fall on the floor. He described that he saw blood coming out of the [victim's] facial area. He also said that at some point in time, [Skinner] took the phone from the [victim].

R. pp. 127-28.

Once the group had returned to Skinner's van, Williams saw that Skinner had taken part of

the cordless phone, the victim's wallet and a kitchen knife.⁸ Skinner likewise gave all of his cohorts money except Williams, and he took back the money that he gave Lisa. **R. pp. 43; 128-29; 158-59.**⁹ Williams further claimed that the group went back to Skinner's house and continued to party. Also, Skinner allegedly showered and changed clothes because his clothes were bloody. They later went to "another location in the Millage Village to a man named Tony's house and partied there." **R. pp. 51-52; 130; 162.** While at this residence of Tony Freeman, one or more persons attempted to use the victim's credit card on the computer.¹⁰ **R. pp. 137-40.**

5. Co-defendant Lisa Schoeneman's account.

Lisa Schoeneman testified that she was with Williams and the others on the night of September 8, 2007, and that she was charged as an accessory after the fact to robbery. **R. pp. 168-69; 178.** She had known Skinner for awhile and she described Jenny Chase as an "acquaintance" whom she did not know well. She met Williams, or Shag, on September 8th. She normally worked from 10:00 p.m. until 7:00 a.m. at an area Wal-Mart. However, Williams, Skinner and Chase came by her residence late in the afternoon of September 8th and they convinced her to "party" with them. **R. pp. 168-71; 181.** So, they all got into Skinner's van and went to his trailer, where they drank liquor and smoked crack cocaine that Skinner provided. They also got ready for a party at another residence. Quite unsurprisingly, Schoeneman never made it to work. **R. pp. 171-72; 179.**¹¹ At some

⁸ Police were unable to locate these items. **R. p. 129.** Det. Wekenmann could not remember whom Williams claimed was in possession of the wallet. **R. p. 53.**

⁹ Thus, his second statement has him sitting where the bloodstain was found in the van and near where the bank card was found. **R. p. 129.** Also contrary to his original statement, Williams indicated that he cut his finger while trying to pull Skinner off of the victim, but he did not respond when asked why no one had anonymously called 911, to get help for the victim, other than to claim that "he didn't feel that it was that bad. So, they just left." **R. pp. 137-40.**

¹⁰ The details of going to Freeman's and attempting to use the credit card were corroborated by police interviews of both of the women who had been accompanying Skinner and Williams. **R. pp. 128-29.**

¹¹ The others had assured her that they would take her to work that night. **R. p. 171.**

point, Williams said “this person had owed him the money, and they were going to retrieve it.” (Schoeneman did not know who this person was). The group then got into Skinner’s van: Chase was driving; Skinner was in the passenger seat; Schoeneman was in the back seat, behind Chase; and Williams was in the back seat, behind Skinner. **R. pp. 172-73; 176.**

They eventually arrive at a residence. Only Williams and Skinner got out of the van but she admitted that Chase may have also gotten out, as well.¹² Schoeneman was “pretty slouched” (sic) and remained in the van. In a statement to police, she said that both men went up to the porch of the residence. Williams and Skinner were gone for “[f]ifteen, [or] twenty minutes,” and they were both sweaty when they returned to the van. Also, Skinner possibly said, “Wish we could have got more money;” however, she denied seeing any money. **R. pp. 173-75; 185-86; 191-92.** The group then headed back to Skinner’s trailer and continued to drink. Skinner showered and changed clothes “[b]ecause he was extremely sweaty.” **R. pp. 175; 185.** The group later went to the residence of Tony Freeman. Schoeneman ended up at Skinner’s later that morning.¹³ **R. pp. 176; 186-89.**

6. Co-defendant Jenny Chase’s account.

Jenny Chase testified that she was charged with accessory after the fact of robbery, as the result of her involvement in the robbery and death of Jack Koch. **R. p. 210.** She met Skinner in 2004 and was staying with him at the time. She had also known Schoeneman for at least two years but she had only met Williams, whom she called “Shag,” on September 8th. Chase admitted that she “was on drugs really bad” at the time. **R. pp. 193-95.** On the 8th, Skinner and Chase had gotten some money from his mother, and they used the money to buy crack and liquor. Sometime that day, a person in a truck dropped off Williams. The three thereafter went to the liquor store. Then, they went

¹² Schoeneman told police that Chase may have been prostituting herself. **R. p. 190.**

¹³ Freeman, his girlfriend and her son (who was in his late teens or twenties) were there.

and picked up Schoeneman and they returned to Skinner's trailer. They drank liquor and smoked crack while putting in a new window at the trailer. **R. pp. 195-96.**

And then some time in the night, Shag had mentioned about going to this gentleman's house that he had been with earlier, and that earlier he was trying to hook Jack up with some woman. And, you know, I'm not sure of, like, if they were going to, you know, try and . . . have her . . . be a prostitute or something. I don't know. But he had mentioned that, and I guess that plan fell because her husband showed up or something.

And he had mentioned to us . . . that the guy . . . wouldn't mind some women coming and dancing or something. And he kept, you know, bringing it up to us, . . . and . . . I was like no, no. And, . . . we just all continued to drink. We did drugs, and the drunker I got, the more inviting the thought was to go ahead and go and dance and make some money. And he had said even if he doesn't want to, he said that he's borrowed money from Jack many times.

R. pp. 196-97.¹⁴

The group eventually went to the victim's residence. She drove because she was the only one who had a licence, and one of the men gave her directions on how to get there.¹⁵ When they reached the victim's residence, Schoeneman remained in the van because she was so intoxicated. Chase, Skinner and Williams, however, got out, went up to the porch and knocked on the door. **R. pp. 197-98; 212; 215.** She recognized the victim, as soon as he opened the door because she had been a waitress at a restaurant where he often dined. So, she said, "hi, Jack, it's Jenny. And then that time, too, [Jack's] saying you guys need to get out of here. I'm going to call the police." This scared Jenny because she was drunk and she was driving. She did not want to drive through Port Royal after the police were called. "So, I left the porch immediately, and I got in the van." Skinner and Williams were on the porch. Within "less than a minute," Skinner returned to the van. **R. pp. 198-99; 201; 212.**

¹⁴ Chase specifically denied that there was any discussion of robbing or murdering anyone. She likewise denied that she had agreed to prostitute herself, and she claimed that she had merely agreed to dance for him. **R. pp. 197; 222.**

¹⁵ She corroborated Schoeneman's recollection that Skinner was in the passenger seat; Schoeneman was in the back seat, behind Chase; and Williams was in the back seat, behind Skinner.

Jenny was embarrassed because she knew Jack for a long time, but Skinner urged her to wait on Williams when she said that she was ready to leave. **R. pp. 199-200.** After they argued for a bit, Skinner finally said, all right, let's just go." Jenny backed out of the driveway and they headed in the direction of the Naval Hospital. However, "Skinner said well, let's just flip around and maybe, . . . [Williams] was able to talk to [Jack] . . . and he probably had gotten some money or something or was able to calm [Jack] down." Jenny turned around and drove in the opposite direction for a distance but they did not see Williams. **R. pp. 200-03; 213-14.** At some point, Jenny turned around and headed back in the direction of the Naval Hospital. This time, they spotted Williams walking down the road "just past" the victim's residence. They stopped, he got into the van and Jenny drove the group back to Skinner's trailer. Along the way, Williams said that he had been able to borrow \$ 57.00. He gave \$20.00 to Skinner and \$ 17.00 to Jenny. Because Jenny did not want the money, Skinner put it in the console.¹⁶ **R. pp. 203-06.** Jenny lied to police about getting out of the van when she was first interviewed about the case because she was reluctant to implicate Skinner, with whom she was living, and she felt that the less she said, the better. Also, "I thought, if I didn't admit to getting out of the van, that they couldn't arrest me." **R. pp. 207-09.**

7. The autopsy findings.

Dr. Michael Caplan, the forensic pathologist who performed the autopsy, testified that the victim "was a large man." He was slightly over 6' tall and weighed 262 pounds. After the blood was cleaned off, Dr. Caplan noticed that the victim had several facial injuries to both the left and right

¹⁶ Jenny denied seeing blood on either Williams or Skinner. Also, neither man was sweaty, and she reiterated that "there was never any mention of robbing" the victim. Along the way to the trailer, they stopped at a convenience store and bought beer. They then went to Skinner's and partied. Later, they went to Tony Freeman's trailer. Jenny's friend, Phyllis, was there as was Phyllis' son, Jason. Jason was "controlling" the computer. Williams, Skinner Freeman, Jason and the passed out Schoeneman left at some point. They were gone "for quite awhile," and Jenny unsuccessfully tried to call them. Jenny, Skinner, Williams and Schoeneman wound up at Skinner's around 6:30 a.m. **R. pp. 203-07; 216-18.**

side of his face and to the top of his head. **R. pp. 255; 258.**

He had a large scrape that went all the way from the right ear to the cheek bone, which was about four by two inches. Kind of a band, going this way. He also had several scrapes and . . . small bruises around . . . the top of the ear, and also in the little space in between the ear. And then he also had a . . . small abrasion, about an inch or so, that was right on the eye socket on the right side. So, that was on the right side.

On the left side he actually had two parallel lacerations or tears that were both about an inch long that were parallel to each other, and, and those were on . . . sort of . . . the front of the face a little bit behind the eye socket. And those were contained within . . . an area abrasion or scrape that was made of a bunch of parallel lines. So, [it] almost looked symmetrical to what was on the right side, but [it was] different because you had the lacerations on the left side and not on the right side. And the abrasions were very fine, like a bunch of little small lines running from the eye socket to up by . . . the temple area. And [with] both of these . . . lacerations, there was what we call undermining where there was separation of the underlying soft tissues, and you could actually put a probe underneath that, . . . and it was directed . . . upward and from the left side to the right side.

In addition to that, he also had another abrasion right in front of the left ear, which is about a half an inch, and then on the front of his, his face he also had some injuries. He had two abrasions or scrapes right on . . . the inner parts of both eyebrows. Those were both about an inch or inch and a half long. And he had some ill defined, but some bruises that looked like they were on . . . the right side of . . . the head just a little bit to the right of the midline going towards the hairline.

He also had some abrasions on the bottom of the nose, some scrapes, and he also had an abrasion that was going across the bridge of the nose that was almost an inch. And when you felt that, you could feel that . . . the bone felt unstable or felt fractured there.

R. pp. 258-60. See also R. p. 264; 275.

When Dr. Caplan examined the victim's mouth, he found that victim's "denture plate was partially broken." The portion "right in front of the right side of the mouth to the right of the midline" was missing. There was corresponding bruising on the gum line in that area. **R. pp. 260-61; 265.**¹⁷ **R. p. 267.** Dr. Caplan opined that these injuries and the buttons missing from the victim's shirt

¹⁷ Dr. Caplan found "some . . . very small injuries," which he described as "a couple of small scrapes" on the victim's left shoulder. **R. pp. 266-67.** There were several "blotchy bruises" on the side front and inside of the victim's arm, as well as two smaller bruises on the back of the victim's left hand. One was close to the "web space between the index finger and the thumb. The other bruise was on the thumb. **R. p. 267.**

were indicative of a struggle with the assailant(s). **R. pp. 280-81.**

On internal examination, Dr. Caplan found that there was a bruise, in the scalp, on the left side of the head. It was “directly below the site where” Dr. Caplan found “the lacerations and the abrasion” and it measured 6" in diameter. “There were also some smaller blotchy bruises in the front of the head in the forehead area, and those are individually much smaller. Not, not more than a half or three-quarters of an inch or so.” Dr. Caplan opined that these were defensive wounds. **R. pp. 266-67.**

Dr. Caplan explained that the injuries to the left side of the face differed from those on the right side. While “the right side of the face was all pretty much a scrape injury” that could be caused by “any kind of a contact with a rough surface,” on the left side of the face there was “evidence of . . . more blunt impact injury.” These injuries required “a little bit more force” because they broke the victim’s skin. Also, this was the location of the 6" diametrical bruise that Dr. Caplan found after reflecting the scalp. “So, the amount of direct blunt force was significantly greater on the left side than on the right.” **R. pp. 270-71.** When Dr. Caplan examined the victim’s brain, he discovered that “on the left side of his brain, underneath the other areas of injury, . . . there was some blood on the surface of the brain, and we call that subarachnoid hemorrhage.” Subarachnoid hemorrhaging is most commonly caused by blunt force trauma, which he opined caused the bleeding in this case. **R. pp. 278-79.**¹⁸

¹⁸ One manner to account for the injuries he described would be if “the side that’s receiving the blows [was] exposed, but the side opposite [was] in a fixed position such as against the wall or against the hard surface. And so as you’re striking this surface here and causing injuries, on the opposite surface that’s against another hard surface, that’s rubbing against that surface.” This would be consistent with the right side of the victim’s face being pressed against the floor while the other injuries were inflicted. **R. p. 271.** Further, Dr. Caplan opined that the linear lacerations on the left side of the face are “[u]sually . . . created when there is . . . force from a relative narrow surface area, such as “the side of a phone or . . . the side of . . . a hand.” Likewise, “the edge of any . . . heavy object could do that as well.” **R. pp. 276-77.** The injuries to the victim’s forehead area and his nose were consistent with receiving a combination of direct blows in those areas, the victim’s head being slammed into a wall or the victim falling on the floor after losing consciousness. **R. pp. 277-78.**

Dr. Caplan opined that “the cause of Mr. Koch's death is . . . his significantly enlarged heart that was attributable to his obesity, and . . . that he sustained an abnormal rhythm or arrhythmia of that heart as a result of that enlarged heart.” However, the various injuries that Dr. Caplan observed contributed to the victim’s death “in that they caused a degree of physical and emotional stress that triggered that abnormal rhythm in his heart at the time of the assault.” **R. pp. 280-81.**¹⁹ More importantly, he opined that “the trigger or the precipitating factor . . . was the physical and emotional stress that he sustained while he was being beaten,” and that the victim would still be alive if this trigger had not occurred. **R. p. 285.** Indeed, the “the blunt-force injury to his head . . . with the bruising on the surface of the brain and subarachnoid hemorrhage . . . conceivably could have . . . precipitated an abnormal rhythm of the heart all by itself.” **R. p. 287.** Finally, based on his findings, he opined that the manner of death was a homicide. **R. pp. 285-86.**

8. SLED DNA testing.

SLED performed DNA testing on items submitted in this case, comparing the items received with known DNA standards for Jack Koch, Williams and Skinner, as discussed, *infra*. **R. pp. 223-48.**

ARGUMENTS

I. The trial judge properly charged the jury on accomplice liability where there was some evidence that supported the submission of this theory to Williams’ jury.

Williams’ first argument is that the trial judge erred by instructing the jury on “the hand of one is the hand of all,” *i.e.*, accomplice liability. He maintains that “te evidence shows that he either

¹⁹ Dr. Caplan explained that once the arrhythmia begins, the brain does not get enough blood. If the arrhythmia lasts for about ten to fifteen seconds, a person will lose consciousness. Unless a person can be resuscitated within five minutes, he or she will suffer irreversible brain injury and die. **R. pp. 282-83.**

committed the crime alone or that he was merely present when Skinner committed the crime. He further claims that the State failed to present any evidence that he aided abetted or assisted Skinner in committing the crime. Respondent disagrees and submits that the trial judge properly charged the jury on accomplice liability because there was evidence presented that supported it.

A. How Williams raised issue at trial.

During the charge conference, the trial judge stated that he intended to use his “standard charge on the hand of one is the hand of all.” He also informed Williams’ counsel that he would charge that “mere presence” and “mere knowledge,” without more, would not be sufficient to establish accomplice liability. **R. p. 311, lines 10-21.** Williams’ counsel objected to the hand of one is the hand of all instruction because the State had not presented any evidence justifying the instruction. **R. p. 312, lines 9-20.** Then, the trial judge read his proposed charge on accomplice liability. **R. p. 312, line 21 - p. 314, line 6.** After this exchange, he and the parties addressed whether he should instruct the jury on involuntary manslaughter. **R. p. 314, line 9 -p. 328, line 6.** *See also Argument II, infra.*

The trial judge subsequently charged the jury instruction on accomplice liability **R. p. 374, line 23 - p. 376, line 9.**²⁰ There was no further objection by Williams, either to this charge (**R. p.**

²⁰ The trial judge charged the jury that:

Now, ladies and gentlemen, I tell you that **when two or more persons get together to aid each other, to encourage each other, to abet or assist each other in the commission of a crime, all parties who are present are principals and are equally guilty. When two or more persons combine together to commit a crime and the crime is committed, all of those who are present to aid and abet and assist in the commission of a crime are guilty. The act of one becomes the act of all; the hand of one becomes the hand of all. It makes no difference by whose immediate hand the crime is actually committed. All are principals.**

However, **mere presence at the scene of a crime, even with knowledge that it is being committed, but without an intent to aid or abet or assist in its commission, would not constitute guilt.** To be guilty as an aider or abettor, the participant must have knowledge of the principal's criminal conduct because mere presence is not enough to establish guilt as an aider or abettor.

382, line 1 - p. 383, line 2) or supplemental instructions given in response to a jury question asking the trial judge to redefine murder, made after approximately forty minutes of deliberations (R. p. 383, line 13 p. 400, line 2. See also Court's Exhibit 5, R. p. 438) or when he re-charged it, as part of his supplemental instructions on murder, which he gave in response to requests by the jury for printed copies of the charges on how to apply both malice and accomplice liability "in conjunction with one another." R. p. 401, line 2 - p. 402, line 11; p. 402, line 12 - p. 403, line 6; p. 403, line 11 - p. 408, line 11; p. 408, line 2 - p. 409, line 21; Court's Exhibit 7, R. p. 440. ²¹

Mere presence at the scene, even in the company of one, does not alone make one an aider or abettor. The conduct of the individual charged or other circumstances attending his presence must be such as to show that he has associated himself with and participated in the criminal undertaking something of significance. In other words, beyond the mere fact of presence is necessary to justify a conviction.

To convict one of aiding and abetting, however, it is not necessary that the identity of the principal be established, nor that he be convicted himself. But the state has to prove that the offense has been committed, and that [the] defendant was present during its commission, aiding and abetting and assisting the one who was committing it. And so the burden is upon the state, then, to establish beyond a reasonable doubt that this defendant was present, and that he was there with a criminal intent. That is to say with an intent to aid, encourage, and abet, or assist another in committing the crimes charged.

R. p. 374, line 23 - p. 376, line 9. (Emphasis added).

²¹ The jury sent the trial judge yet another question (Court's Exhibit 8, R. p. 441), and he brought the jury in at 8:05 p.m. R. p. 410, lines 3-5. This time the jury asked

Does the lack of taking action to help someone after they have been beaten constitute aiding and abetting murder or malice?

R. p. 410, lines 15-18. See also Court's Exhibit 8, R. p. 441.

In response, the trial judge first reminded jurors that the jury was the judge of the facts, and he was "the judge of the law. Also, in his role as the trial judge, he was not permitted to comment "on the facts of the case," or to indicate to them any opinion of the facts he might have or to tell them what he felt the proper verdict was. Their last question asked for his opinion as to whether or not something in the case "constituted aiding and abetting, or constituted malice. However, he could not provide them with such an opinion. R. p. 410, line 19 - p. 411, line 5. He then agreed to try to further clarify the concept of malice and he explained (as he had previously) that he "must necessarily define malice] in the abstract. In other words, I can't define it in terms of any particular case. That would be, as I've said, a comment on the facts, and you have to decide the facts and apply the law." However, after further explanation as to why he could give jurors the answer that they sought, he sent the jury home for the evening, at 9: 39 p.m., without further deliberation. R. p. 411, line 6 - p. 416, line 4. The following morning, the jury resumed deliberations at 9:45 a.m. R. p. 420, lines 16-20. As the result of a note from the jury (Court's Exhibit 9), the trial judge later gave a supplemental instruction clarifying the term "reasonable doubt;" he clarified that sentencing was not a proper concern for the jury; and he gave an abbreviated *Allen v. United States*, 164 U.S. 492 (1896) charge. R. pp. 422-28.

B. Discussion.

There was no error. “The law to be charged must be determined from the evidence presented at trial.” *State v. Knoten*, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). “If any evidence supports a requested jury charge, the trial court should grant the request.” *State v. Ward*, 374 S.C. 606, 614, 649 S.E.2d 145, 149 (Ct. App. 2007). In *State v. Mattison*, 388 S.C. 469, 479-480, 697 S.E.2d 578, 584 (2010), the Court explained the relevant law governing accomplice liability or “the hand of one is the hand of all,” as follows:

“It is well settled that a defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense.” *State v. Dickman*, 341 S.C. 293, 295, 534 S.E.2d 268, 269 (2000). “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 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.’ ” *State v. Langley*, 334 S.C. 643, 648-49, 515 S.E.2d 98, 101 (1999) (quoting [*State v. Austin*, 299 S.C. 456, 459, 385 S.E.2d 830, 832 (1989)]).

“In order to be guilty as an aider or abettor, the participant must be chargeable with knowledge of the principal's criminal conduct.” *State v. Leonard*, 292 S.C. 133, 137, 355 S.E.2d 270, 272 (1987); see *Wilson v. Wilson*, 319 S.C. 370, 373, 461 S.E.2d 816, 817 (1995) (“Prior knowledge that a crime is going to be committed, without more, is not sufficient to make a person guilty of the crime.”).

“Mere presence at the scene is not sufficient to establish guilt as an aider or abettor.” *Leonard*, 292 S.C. at 137, 355 S.E.2d at 272; *State v. Barroso*, 328 S.C. 268, 272, 493 S.E.2d 854, 856 (1997) (stating that mere association with admitted members of a conspiracy is insufficient to tie other persons to the conspiracy). However, “presence at the scene of a crime by pre-arrangement to aid, encourage, or abet in the perpetration of the crime constitutes guilt as a principle.” *State v. Hill*, 268 S.C. 390, 395-96, 234 S.E.2d 219, 221 (1977).

“Any person who is present at a homicide, aiding and abetting, is guilty of the homicide as a principal, even though another does the killing.” *State v. Zeigler*, 364 S.C. 94, 103, 610

After yet further deliberations, the jury found Williams guilty of all charges at 1:45 p.m.

S.E.2d 859, 864 (Ct.App.2005).

Here, the trial judge properly instructed jurors on accomplice liability because there was evidence to support submitting this theory of liability to the jury. First, it is undisputed that Williams, Skinner and their female companions all went to the victim's home in Skinner's van and that the purpose of going there was to get money from the victim, so that the four co-defendants could get more crack and/or alcohol and continue partying. Second, Chase and Schoeneman testified that it was Williams' idea to go to the victim's house and get money. Third, Schoeneman testified that *both* men went up to the porch of the residence; that they were gone for "[f]ifteen, [or] twenty minutes;" and that they were *both* sweaty when they returned to the van. Fourth, Skinner possibly said, "Wish we could have got more money;" however, Schoeneman denied seeing any money. **R. pp. 173-75; 185-86; 191-92** (emphasis added).²² This evidence is enough to support the trial judge's decision to submit a jury instruction on accomplice liability because there is, at the very least, circumstantial evidence that both were present, aiding and abetting each other in the commission of a robbery and burglary. *E.g.*, *Ward*, 374 S.C. at 614-15, 649 S.E.2d at 149-50; *State v. Curry*, 370 S.C. 674, 682-85, 636 S.E.2d 649, 653-54 (Ct. App. 2006).²³

However, portions of Chase's testimony likewise demonstrate that Williams and Skinner were acting in concert at the time of offenses, despite her testimony that she never heard any

²² Also, expert DNA analysis of items swabbed at the scene showed that Williams and the victim could not be excluded from a DNA mixture on a swab taken from the doorknob inside the front door. More importantly, the DNA profile developed from swabs of blood taken from the living room floor (State's Exhibit 28), from the front porch floor (State's Exhibit 30), from a porch step (State's Exhibit 35) and from the driveway (State's Exhibit 37) matched Williams, as did a swab of the blood taken from the back seat of the van, which was near the bank card with the victim's account numbers on it. **R. pp. 232-35; 239-41**. As to all of the items matching Williams' DNA profile, "[t]he probability of randomly selecting an unrelated individual having a DNA profile matching the DNA profile from these items is approximately one in 320 quadrillion." **R. p. 234; see also R. pp. 235-36; 241**.

²³ See also *Condrey*, 349 S.C. at 193-95, 562 S.E.2d at 324-25; *Barber v. State*, 393 S.C. 232, 236, 712 S.E.2d 436, 439 (2011); *State v. Gibson*, 390 S.C. 347, 355, 701 S.E.2d 766, 770 (Ct.App. 2010); *State v. Langley*, 334 S.C. 643, 649, 515 S.E.2d 98, 101 (1999); *State v. Bultron*, 318 S.C. 323, 457 S.E.2d 616 (Ct.App. 1995).

discussion about robbing or murdering anyone. Specifically, Chase's testimony vacillated as to whether Skinner or Williams gave her directions to the victim's residence. Ultimately, she testified one of the men gave her directions. **R. p. 340**. She also testified that she immediately left the porch and got in the van when the victim threatened to call the police if she, Skinner and Williams did not leave. (Thus, the subsequent entry into the house was a burglary. *See Argument II, infra*). Skinner, however, remained for a short period, which she thought was "less than a minute," before he returned to the van. **R. pp. 198-99; 201; 212.**²⁴ Thus, a reasonable inference from these portions of Chase's testimony, when considered in light of the other evidence, is that Skinner participated in the crimes, *at the very least*, as an accessory providing transportation to the scene, the getaway vehicle and assistance when any confrontation with the victim began. Further, he was financially rewarded for his efforts. *Id. See also State v. Gates*, 269 S.C. 557, 560-61, 238 S.E.2d 680, 681-82 (1977).

Moreover, the jury could not find Williams guilty under a theory of accomplice liability, based upon the charge given, unless it found that both men combined with the purpose and intent to aid, encourage, abet or assist each other in the commission of the crimes charged. Importantly, they could not convict Williams based upon his mere presence, even if he had knowledge that Skinner was going to commit a crime. **R. p. 374, line 23 - p. 376, line 9.**²⁵

²⁴ Even then, he urged her to wait on Williams when she said that she was leaving because she was embarrassed and, when she did start to drive away, he twice prevailed upon her to turn around and retrace their route, before he spotted and picked up Williams. Williams gave \$20.00 to Skinner and \$ 17.00 to Jenny of the \$ 57.00 he said that he was able to "borrow." **R. pp. 200-06; 213-14.**

²⁵ Williams' argument that the jury could have found him guilty for merely being present at the scene and not assisting the victim. However, his argument is not preserved for this Court's review because it was not presented to the trial judge. *See State v. Bailey*, 298 S.C. 1, 5-6, 377 S.E.2d 581, 584 (1989) (a party cannot argue one theory at trial and a different theory on appeal); *State v. Watts*, 321 S.C. 158, 167, 467 S.E.2d 272, 278 (Ct.App. 1996) ("To be preserved for appellate review, an issue must be both presented to and passed upon by the trial court"). Also, a much more reasonable construction of the record is that one or more jurors was apparently wrangling with issues related to causation. This is borne out by the Forelady's response, "Yeah. That's exactly it," when the trial judge asked if the jury had understood the "individual definition of the hand of one [is] the hand of all" but was requesting instruction on how to apply both malice and accomplice liability "in conjunction with one another."**R. p. 402, line 22 - p. 403, line 6.**

Finally, and even if it was error to instruct Williams' jury on accomplice liability, any error in submitting the charge must be viewed as non-prejudicial and harmless beyond a reasonable doubt. "Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained." *State v. Pagan*, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006); *State v. Sherard*, 303 S.C. 172, 175, 399 S.E.2d 595, 596 (1991).²⁶

Here, the evidence of Williams' own involvement in the murder and other crimes is overwhelming, albeit in large part circumstantial, as shown by the discussion of the evidence in the Statement of Facts, *supra*. This evidence includes both eyewitness testimony and evidence that his blood was both inside and outside the crime scene. Further, DNA analysis of the swabs submitted in this case showed that his blood was left in the living room and outside the house. It is also inferable that it was left at the time of the robbery and beating that resulted in the victim's death, since there was no evidence that the house was bloody before the attack on the victim.²⁷ Thus, the circumstantial evidence of his own involvement in the crimes is overwhelming. Moreover, the accomplice liability charge, as given, precluded a conviction based upon mere presence or mere association. *Accord Mattison*, 388 S.C. at 480-84, 697 S.E.2d at 584-87; *State v. Kelsey*, 331 S.C. 50, 76-77, 502 S.E.2d 63, 76-77 (1998); *State v. Collins*, 266 S.C. 566, 570-71, 225 S.E.2d 189-92 (1976). Thus, any error must be viewed as harmless because it did not contribute to the verdict. *Pagan*, 369 S.C. at 212, 631 S.E.2d 262 at 267.

II. The trial judge properly refused to instruct the jury on the lesser-included offense of

²⁶ This Court "must review the facts the jury heard and weigh those facts against the erroneous jury charge to determine what effect, if any, it had on the verdict." *State v. Jefferies*, 316 S.C. 13, 446 S.E.2d 427 (1994). In making a harmless error analysis, the correct inquiry is whether the erroneous charge contributed to the verdict rendered. *Id.*

²⁷ Likewise, Williams (along with the victim) could not be eliminated as contributing to the DNA mixture found on the inside knob of the front door; there was no evidence that Williams had previously been in the house; and John Koch testified that his father was so embarrassed that his home was so cluttered that he would not invite visitors into it. **R. p. 32.**

involuntary manslaughter because there was no evidence presented to support either prong of the requested charge.

Williams' also argues that the trial judge erred by refusing to instruct the jury on the lesser-included offense of involuntary manslaughter. There was no error because there was no evidence presented to support either prong of the requested charge.

A. How issue was raised.

During the charge conference, Williams' trial counsel requested a jury instruction on involuntary manslaughter. He argued that "there's ample evidence in the record to show that . . . what we have here, whoever perpetrated this particular crime did so as an involuntary manslaughter as opposed to either a murder. He conceded that there was no evidence in the record I can find to support a charge on voluntary manslaughter, but suggested that the evidence supported a charge on involuntary manslaughter. **R. p. 314, lines 9-17.** The State opposed the requested instruction because there was no evidence to support it because "[t]hese are definitely intentional acts, and it's not a reckless disregard. This is during the commission of other crimes: burglary [and] robbery." **R. p. 314, line 20 - p. 315, line 5.**

After the trial judge read a definition of "involuntary manslaughter" from a treatise and indicated that the facts did not support the requested charge, Williams' counsel further explained his position.²⁸ **R. p. 315, line 20 - p. 317, line 18.** The trial judge, however, noted that an intent to rob was apparently formed at some point because it was undisputed that the victim's money was taken. Further, he quoted a definition of involuntary manslaughter from an appellate decision and he stated that "I'm not inclined at this point in time to charge a lesser included of involuntary or anything else.

²⁸ "What . . . I'm saying, Your Honor, is that if there's ample evidence in that regard for the jury to find that there was never any intent to commit a robbery . . . when they went into that house, there was never any intent to commit a crime inside of that house." One of the younger men got into a confrontation with the victim and the younger man prevailed. He also argued that there was no evidence to commit a crime when this occurred.

... [I]t's going to be a straight murder of guilty or not guilty. The ... issue ... of whether the intent was present or not is going to be an issue that goes to the underlying charge of murder itself. Not as to whether it reduced the charge to, to involuntary manslaughter.” **R. p. 317, lines 19-21; p. 319, line 18 - p. 321, line 13.**²⁹

In response, trial counsel argued that the jury could find that “never once did these people intend to commit a robbery when they arrived at that house.” Thus, “there was no burglary.” Rather, the house was entered after the confrontation began and was part of it. Counsel conceded that the money was taken but argued that “we do not know, again, when that robbery intent was made,” and he suggested the jury could find the intent was formed after the victim was unconscious. **R. p. 321, line 20 - p. 323, line 2.** The trial judge noted he had thirty minutes to further research on this issue and he took the matter under advisement. **R. p. 323, lines 3-9.** After a recess, the trial judge ruled that he would not charge involuntary manslaughter. He first read the definition of involuntary manslaughter from the South Carolina Supreme Court’s Opinion in *State v. Reese*, 370 S.C. 31, 633 S.E.2d 898 (2006), *overruled on other grds.*, *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009). Then, he stated that “I cannot find that the elements of involuntary manslaughter as defined most recently in *State vs. Reese* and prior to that in two other cases is applicable in this particular case, and so I will decline over objection of defense counsel to charge in that regard.” **R. p. 327, lines 2-22.**

B. Discussion.

Again, “[t]he law to be charged must be determined from the evidence presented at trial.” *Knoten*, 347 S.C. at 302, 555 S.E.2d at 394. To warrant a court's eliminating the offense of manslaughter, it should very clearly appear that there is no evidence whatsoever tending to reduce

²⁹ He also reviewed the evidence supporting his understanding of the record, and he noted that Dr. Caplan had eliminated concerns he might have had as to causation. **R. p. 318, line 15- p. 319, line 17.**

the crime from murder to manslaughter. *State v. Cole*, 338 S.C. 97, 101, 525 S.E.2d 511, 513 (2000); *State v. Brayboy*, 387 S.C. 174, 179-80, 691 S.E.2d 482, 485 (Ct.App. 2010). Involuntary manslaughter is: (1) the unintentional killing of another without malice, but while engaged in an unlawful activity not amounting to a felony and not naturally tending to cause death or great bodily harm; or (2) the unintentional killing of another without malice, while engaged in a lawful activity with reckless disregard for the safety of others. *State v. Smith*, 391 S.C. 408, 414, 706 S.E.2d 12, 15 (2011) (citing *State v. Cabrera-Pena*, 361 S.C. 372, 380–81, 605 S.E.2d 522, 526 (2004)).

Here, the trial judge properly denied the requested instruction because the only evidence presented was that Williams was engaged in the felony of burglary at the time the victim was killed. *See* S.C. Code Ann. § 16-3-311(A) (Supp. 2011). His argument that the jury could find that there was no intent to rob at the time he entered the house was properly rejected for several reasons. First, his argument is predicated upon the idea that the jury could have accepted the State’s evidence in part and rejected it in part. However, “[t]he mere contention that the jury might accept the State’s evidence in part and reject it in part is insufficient to satisfy the requirement that some evidence tend to show the defendant was guilty only of the lesser offense.” *State v. Geiger*, 370 S.C. 600, 608, 635 S.E.2d 669, 674 (Ct.App. 2006) (citation omitted). Another reason his argument must be rejected is that Chase’s testimony was un-refuted: after the victim answered the late night knock on his door, she recognized him and said, “hi, Jack, it’s Jenny.” However, the victim said, “you guys need to get out of here. I’m going to call the police.” **R. pp. 199, lines 3-12; see also p. 212, lines 13-24.**

Thus, there was an intent to commit a trespass at the time of entry into the victim’s dwelling. This was sufficient to support a burglary conviction. *McMillian v. State*, 383 S.C. 480, 486-88, 680 S.E.2d 905, 907-09 (2009) (counsel was not ineffective in advising petitioner that the intent to

commit a crime in the burglary statute could be inferred from a trespass).³⁰ Likewise, he had the intent to commit a strong arm robbery, which is a felony, at the time he and/or Skinner entered the home. South Carolina defines strong arm robbery as “the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear.” *State v. Gourdine*, 322 S.C. 396, 472 S.E.2d 241, 241 (1996) (internal quotation marks and citation omitted). Contrary to Williams’ argument, it was unnecessary for the State to prove that Williams and Skinner formed the intent to rob before entry into the victim’s residence because his intent may be inferred from the robbery after the victim was rendered defenseless or killed. *See Damon*, 285 S.C. at 129, 328 S.E.2d at 631 (affirming the defendant’s death sentence for murder ‘in the commission of’ an armed robbery, even though the defendant claimed that the robbery was “an afterthought,” and holding that the statutory aggravating circumstance of murder committed while in the commission of armed robbery was properly submitted to the jury where “the record reveals without question that the murders were committed ‘while in the commission of’ armed robbery or larceny with the use of a deadly weapon. The jury verdict in the guilt phase established that the appellant murdered Mr. Felder and Mrs. Bowman. The record is replete with evidence that property belonging to the deceased individuals was stolen in a continuing sequence of criminal acts at the time of the murders”); 67 Am.Jur.2d *Robbery* § 14 (2009) (“[A] taking from the body of one already dead is a taking ‘from the person’ if the death and the taking are so connected as to form a continuous chain of events.”); 77 C.J.S. *Robbery* § 9 (2009) (“Although, as an abstract principle of law, one ordinarily cannot be guilty of robbery if the victim

³⁰ *See also id* at 489, 680 S.E.2d at 909 (Pleicones, J., concurring) (“I agree ... that counsel was not ineffective in advising petitioner that a jury could find the requisite intent to commit a crime for purposes of burglary from his trespass into the Hicks’ home”); *State v. Christensen*, 194 S.C. 131, 137-39, 9 S.E.2d 555, 558-59 (1940) (holding that on a charge under former housebreaking statute, *i.e.*, breaking and entering into a dwelling with the intent to commit a felony or a crime of a lesser grade, the element of intent to commit a crime of a lesser grade could be satisfied by a trespass).

is a deceased person, this principle does not apply where a robbery and homicide are a part of the same transaction and are so interwoven with each other as to be inseparable. If the taking was made possible by an antecedent assault, the offense is robbery regardless of whether the victim died before or after the taking of the property”). See also *Jones v. State*, 652 So.2d 346, 350 (Fla.1995), cert. denied, *Jones v. Florida*, 516 U.S. 875 (1995) (finding violent murders and taking of victims' property were part of continuous acts and therefore supported robbery convictions); *Oglesby v. State*, 243 Ga. 690, 256 S.E.2d 371, 374 (1979) (affirming trial judge's denial of directed verdict for armed robbery where defendant contended the taking of the victim's property did not occur until after the victim either was comatose or dead).

Thus, he unquestionably had the intent to commit one, if not two separate crimes at the time of the killing. As a result, he was committing the felony of burglary at the time of the homicide. Moreover, even if there was no intent to commit the strong arm robbery when he entered the residence, it is clear that he was in the commission of this separate felony at the time of the homicide, see *State v. Damon*, 285 S.C. 125, 129, 328 S.E.2d 628, 631 (1985), and there is no evidence to support an involuntary manslaughter charge.

Furthermore, and even if he was not committing two felonies at the time of the killing, the “unlawful activity” in which he was engaged, is not one “not naturally tending to cause death or great bodily harm.” There is likewise no evidence of “reckless disregard for the safety of others.” To the contrary, the only evidence is that the elderly victim was beaten so badly that he had a heart attack. This severe beating included breaking the victim’s nose; breaking his dental plate; and slamming his head into a closet door. This slam was hard enough that it left his hair embedded in the door, it caused a visible depression in the door, and it caused a 6" bruise with subarachnoid hemorrhaging that could have triggered the heart arrhythmia. **R. p. 287.** As a result, he cannot satisfy either prong

of the definition of involuntary manslaughter and he trial judge properly refused the requested charge. *See Smith*, 391 S.C. at 414, 706 S.E.2d at 15; *Cabrera-Pena*, 361 S.C. at 380-81, 605 S.E.2d at 526; *Gibson*, 390 S.C. at 355-58, 701 S.E.2d at 770-72.

CONCLUSION

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

Respectfully submitted,

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June 28, 2013.

By: 
WILLIAM EDGAR SALTER, III
ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From Beaufort County
The Honorable Thomas W. Cooper, Jr., Circuit Court Judge
Appellate Case No. 2012-213691

THE STATE,

Respondent,

vs.

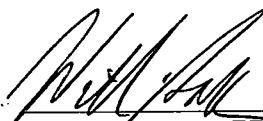
KENNETH SAMMY WILLIAMS,

Petitioner.

CERTIFICATE OF COMPLIANCE

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

This 28th day of June, 2013.



WILLIAM EDGAR SALTER, III
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**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

**Appeal From Beaufort County
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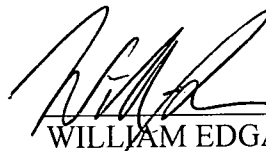
Petitioner.

CERTIFICATE OF SERVICE

I, William Edgar Salter, III, counsel for the Respondent, certify that I have served the within Return to Petition for Writ of Certiorari and Certificate of Compliance on Appellant by depositing three (3) copies of the same in the United States mail, first class, postage prepaid, addressed to his attorney of record, Susan B. Hackett, Esq., SCCID/Division of Appellate Defense, P.O. Box 11589, Columbia, South Carolina 29211.

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

This 28th day of June, 2013.



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