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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
G.D. Morgan, Jr., Circuit Court Judge

Appellate Case Nos. 2023-000182 and 2023-001149

The State, ...Respondent,

v.

Luis Armando Alvarez,..Appellant.

AND

The State, ...Respondent,

v.

Juan Carlos Alvarez, ...Appellant.

FINAL BRIEF OF RESPONDENT

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II. The trial court properly charged the jury on accomplice liability and the theory of "the hand of one is the hand of all" for the specific intent crime of attempted murder. In any event, the trial court did not err because the jury charge, as a whole, was substantially correct and adequately covered the law applicable to the case. Finally, any possible error was harmless in this case because, beyond a reasonable doubt, it did not contribute to the jury's verdict. 27

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RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

1. Whether the trial court properly declined to instruct the jury on self-defense because the evidence and testimony presented during trial did not establish any of the required elements of self-defense and, instead, established Appellants, without provocation, unlawfully attempted to kill the two unarmed victims by repeatedly stabbing and slashing them with box-cutters, causing life-threatening injuries that required immediate medical attention?

2. Whether the trial court properly charged the jury on accomplice liability and the theory of "the hand of one is the hand of all" for the specific intent crime of attempted murder? Whether the trial court did not err where the jury charge, as a whole, was substantially correct and adequately covered the law applicable to the case? Even if the trial court erred, whether any possible error was harmless in this case because, beyond a reasonable doubt, it did not contribute to the jury's verdict?

3. Whether Appellants' argument that the trial court erred in failing to charge the jury that he had the right to remain silent is preserved for appellate review where it was neither raised to nor ruled upon by the trial court during trial? Even if preserved, whether the trial court cured any possible error by properly charging the jury on the right to remain silent and not to testify prior to the final verdict being read and entered, thus rendering the charge substantially correct and adequate in covering the law applicable to the case? Finally, whether any possible error was harmless because it would not have affected the jury's deliberations or contributed to the verdict?

4. Whether the trial court properly denied Appellants' pretrial motions to dismiss where Appellants failed to establish any *Brady* or other due process violations because they failed to demonstrate the information or evidence at issue was favorable to Appellants or that it was material to their guilt or innocence, or was impeaching?

STATEMENT OF THE CASE

Luis Armando Alvarez (Luis) and Juan Carlos Alvarez (Juan) (Appellants) were each indicted at the December, 2020 term of the grand jury for Greenville County for two counts of attempted murder (Luis: 2018-GS-23-9562 & -9563 – count 1) (Juan: 2019-GS-23-305 & -306 – count 1) and two counts of possession of a weapon during the commission of a violent crime (Luis: 2018-GS-23-9562 & -9563 – count 2) (Juan: 2019-GS-23-305 & -306 – count 2). On May 9-13, 2022, Appellants proceeded to a joint trial by jury before the Honorable G.D. Morgan, Jr. Luis was represented by Asher Watson of the Thirteenth Circuit Public Defender's Office and Juan was represented by Sara Gorski and Paul Neely of the same office. Respondent (the State) was represented by Assistant Solicitors W. Douglas Richardson and Jessica Holland of the Thirteenth Circuit Solicitor's Office. At the conclusion of trial, the jury found Appellants guilty as indicted. They were sentenced by Judge Morgan to twenty-five (25) years' concurrent imprisonment for each count of attempted murder, and five (5) years' concurrent imprisonment for each count of possession of a weapon during the commission of a violent crime. (R.p.12-p.39; p.590-p.598). On May 20, 2022, Luis filed a written "Motion for New Trial" and a written "Motion for Verdict in Arrest of Judgment," and on May 25, 2022, Juan filed nearly identical motions with the trial court. (R.p.4-p.11). In separate orders dated November 3, 2022, and filed November 22, 2022, (Luis), and dated June 12, 2023, and filed June 13, 2023 (Juan), the trial court denied the post-trial motions. (R.p.1-p.3).

Appellants timely filed separate notices of intent to appeal their convictions and sentences; however, by Order filed September 5, 2023, this Court granted their motion to consolidate, initially ordering that: "the cases shall be briefed separately, but they will share the same caption and Record on Appeal." (September 5, 2023 Order). With subsequent permission

from this Court, a joint "Initial Brief of Appellants" was submitted in support of Appellants' appeal by Beattie B. Ashmore, Esquire, of the Greenville County Bar. This Brief of Respondent follows.

STATEMENT OF FACTS

As briefly summarized by the solicitor during his opening statement, the charges against Appellants stemmed from an incident that took place on September 22, 2018, outside of a small club in Greenville called "Vibe." The solicitor explained that after an initial verbal argument in the bar about a song that was played, brothers Luis and Juan Alvarez waited outside and ambushed victim Orlando Lopez (Lopez) as he left the club, cutting him numerous times. When the second victim, Javier Solis (Solis), came out, saw what was happening, and attempted to help Lopez, Appellants turned on Solis and cut him numerous times. (R.p.172-p.174).

Pretrial Motions

On May 9, 2022, the trial court held a hearing to address several pre-trial motions. First, the State asked the court to conduct a *Neil v. Biggers*[1] hearing regarding the reliability of the out-of-court identifications of Juan Alvarez from photo lineups, and the admissibility of eyewitness identification testimony the State would offer at trial. After hearing from several witnesses, the court found the identifications did not result from any suggestive processes or procedures and ruled the identifications admissible. (.R.p.45-p.87). Appellants subsequently objected to the *Biggers* ruling, but the trial court maintained its decision that the photo lineup procedures were not suggestive and advised Appellants they could attack the identifications on cross-examination. (R.p.146-p.155).

[1] 409 U.S. 188 (1972).

Luis then made a motion to dismiss all charges due to an alleged *Brady*[2] violation. According to the transcript, he handed up a written copy of his motion; however, the State has been unable to determine any such motion was filed with the Greenville County Clerk of Court. (R.p.87). Near the end of the on-the-record arguments on the *Brady* motion, Luis advised the trial court he had prepared an amended motion and suggested making the motions a "Court's exhibit;" however, it does not appear that was done as no Court's exhibits are noted in the list of exhibits from the transcript. (R.p.44; p.140, lines 4-12). Juan joined in the motion to dismiss. (R.p.91).

Appellants argued the State violated their rights to due process by failing to disclose evidence favorable to the defense as required by *Brady*. Their initial argument focused on a possible recording from Greenville County Deputy Urbina's body-worn camera, which he was wearing when he served Appellants with arrest warrants following their extradition from Florida. Urbina verbally translated those arrest warrants into Spanish when they were being served and noted in a subsequent incident report that his body-worn camera was activated while he read the warrants. Appellants argued the body camera recording may have exculpatory value because it could show physical injuries Appellants claimed they suffered at the hands of the victims in support of a possible claim of self-defense. (R.p.87-p.91). The solicitor responded that he felt like he had been "ambushed" with the heretofore unknown motion, pointed out that the warrants were not served and read by Urbina until approximately three weeks after the incident, and noted that he had provided Appellants all discovery he had in his possession. He said he did not know if the body camera footage was even available but could certainly go look. (R.p.91-p.93).

Appellants continued to claim that Urbina's body camera recording might show physical evidence of injuries and added that the audio portion of the recording could also possibly reveal

[2] *Brady v. Maryland*, 373 U.S. 83 (1963).

exculpatory information that was stated during their translated conversation with Urbina. (R.p.93-p.95). They then expanded their argument to complain the State also had not turned over any records from the State of Florida when Appellants were taken into custody to be extradited to South Carolina, arguing those records also could contain exculpatory evidence of physical injuries. (R.p.95, lines 11-21). Appellants said they were not alleging the State acted in bad faith, only that there was a *Brady* violation which required dismissal because the State had failed to disclose the potentially exculpatory evidence. (R.p.93-p.95). The solicitor noted his office has an "open file policy," argued dismissal was not a proper remedy, and asked for time to look for the alleged *Brady* material. Appellants objected and the trial court took a short recess to "look at" the issue. (R.p.96-p.102).

After the short break, Appellants further expanded their argument to include additional material they claim should have been disclosed pursuant to *Brady*, including: (1) the 911 call reporting the incident, (2) Juan's passport, and (3) the body-worn camera recording from Officer Cassel, when he interviewed victims and witnesses at the hospital after the incident. They reiterated their claim that the "Florida paperwork" could include photographs or information about their alleged injuries. (R.p.110-p.116). Ultimately, the trial court asked the solicitor to make inquiries to determine what information might be available and took the motion to dismiss under advisement. (R.p.116, lines 10-24).

The pretrial hearing resumed two days later, on May 11, 2022, at which point the parties continued to argue their respective positions about the alleged *Brady* violations. The solicitor provided the dates each public defender had accepted discovery from the State and noted none of them had ever contacted his office to ask for additional materials they wanted which had not already been provided. He also noted that if either of the Appellants had requested specific

information (such as a body-worn camera recording) and been told it was unavailable, he could have filed a motion to compel and these *Brady* issues could have been resolved long before trial. (R.p.119, line 20-p.121, line 10). The solicitor then explained his efforts to find the body camera footage in question, during which he learned that neither Urbina's nor Cassel's recordings were available because they had never been downloaded to the server. The solicitor argued that to the extent the defense claimed this meant the evidence was lost or destroyed, this was a result of a technological failure and not due to bad faith, and therefore would not constitute a *Brady* violation. He further argued that the mug shots from the arrest in Greenville, which were provided to Appellants, showed no injuries. He noted that during the booking process arrestees are asked if they have any injuries but that booking reports are typically released only by court order. The solicitor advised the State had actually prepared a consent order for the court to order disclosure of the booking reports to both parties; however, Appellants objected to this attempt to provide those reports. He argued the reports would have provided comparable evidence in regard to alleged injuries, that Appellants efforts appeared to be a delay tactic, and that everything showed none of the evidence was exculpatory in the first place and therefore there was simply no *Brady* violation. (R.p.119-p.125; p.135-p.137).

Appellants then made additional arguments, claiming they had objected to the consent order because the booking reports constituted medical records protected by HIPPA which should have been reviewed by the court in camera rather than being disclosed to the State and defense at the same time. Interestingly, Appellants did not mention ever filing a motion or request for in camera review per *Blackwell*.[3] (R.p.131, lines 4-14). Appellants also claimed Cassel's body camera footage might have included impeachment evidence they could have used against the State's witnesses during trial. (R.p.137, lines 7-21). At the conclusion of the arguments, the trial

[3] *State v. Blackwell*, 420 S.C. 127, 801 S.E.2d 713 (2017).

court made a detailed ruling, reciting the elements required to show a *Brady* violation, and concluding: "at this time I do not find a *Brady* violation." (R.p.141, line 19-p.143, line 2). The trial court analyzed the relevant federal and state caselaw and held: "I find that a *Brady* violation has not been committed in this case." (R.p.143, line 3-p.146, line 6).

Trial

After denying Appellants' motion to dismiss, the jury was sworn and the trial court gave brief preliminary instructions to the jurors. (R.p.159-p.168). During opening statements, the solicitor described the charges and the elements of those charges, specifically noting that a conviction for attempted murder *required proof there was an intent to kill the victims*. He then acknowledged the State's burden of proof and described the incident at Vibe which led to the charges. (R.p.168-p.174). Each Appellant then gave an opening statement. Juan posited an alternate theory of the incident, claiming that he and Luis were asked to leave the bar when it closed, "[a]nd when they get outside, Orlando Lopez, Jhefrey Colorado, and Javier Solis are lying in wait, waiting to attack Juan and Luis." (R.p.176, lines 1-4). He claimed he and Luis defended themselves from this attack, and then proceeded to highlight alleged shortcomings in the police investigation following the incident. (R.p.174-p.180). Luis argued the State's case was full of "voids" and "omissions." (R.p.180-p.182).

The State then began presenting its case-in-chief, first calling Lopez to the stand to describe the incident. Lopez testified that at about 2:05 a.m. on September 22, 2018, he went by himself to Vibe to say hello to the owner, who was a friend. He sat at the bar and asked for a drink. Appellants were at the bar when he arrived, sitting two chairs down from where he sat. When Lopez heard a particular song playing he commented "what an ugly song," at which point one of the Appellants responded "shut up your mouth you Colombian son of a bitch." (R.p.186,

lines 2-15). Appellants appeared intoxicated. Lopez told the owner he did not want trouble, so he paid and left. Lopez testified he was going towards his car but did not have time to get there before he was suddenly attacked from behind. At the time of the attack, Jhefrey Colorado (Colorado) was outside the club, but Solis was still inside. Lopez did not know either man before that night. When Lopez turned to see who was attacking him, he recognized Appellants, both of whom were already stabbing him as he turned around. He said he almost immediately lost consciousness and the last thing he remembered was being stabbed by both Appellants. Lopez's next memory was when an ambulance arrived at the scene. He testified he ended up with nine cuts on his back, one on his neck, one on his stomach, and one on his arm. Lopez identified several photographs of the wounds and photographs of the clothing he was wearing the night of the attack, and those photos were admitted into evidence without objection. He then described identifying Juan from a photo lineup presented to him by the police while he was at the hospital, and he made an in-court identification of both Appellants. (R.p.182-p.202). On re-direct, Lopez clarified he briefly spoke to Colorado when he left the club when Colorado "asked me for a light or maybe I asked him for a light for the cigarette, but from afar." (R.p.221-p.222).

The State then called Colorado to the stand. Colorado testified he went with a girlfriend to Vibe at 10 or 10:30 p.m. on the evening of September 21, 2018, to meet two friends. At some point later, he saw Appellants sitting at the bar. He did not initially see Lopez, but he did see Solis, who was one of the people he went to meet. Later, he saw Lopez at the bar and noticed Appellants were only three or four feet from Lopez. Colorado testified he saw a small argument between Appellants and Lopez but he did not pay much attention, and later saw Lopez leaving the bar. Colorado said Lopez left the club first, and shortly thereafter Colorado left to go to his car to look for a cigarette. Colorado asked Lopez for a cigarette, but he did not have one, so they

tried to find one in Colorado's car. Colorado testified that when Lopez returned to his own car, Lopez was confronted with insults from Appellants. (R.p.226-p.232). Colorado heard Lopez say he did not want any problems, but Appellants "started attacking him without any mercy." (R.p.232, lines 13-25).

Colorado testified both Appellants were armed with knives during the attack and he saw Lopez fall to the ground unconscious. Lopez did not have a weapon. Colorado said Solis had come out of the bar at some point, saw the attack, and started screaming for Appellants to stop; however, they continued attacking Lopez and kicking him in the head while he was on the ground. Solis tried to separate Appellants from Lopez, and then they both began attacking Solis with their knives. Colorado said Solis did not have a weapon. Colorado tried to find something to protect himself with, and although he could not remember if it was a tube or a stick, he grabbed something and went toward Appellants, who ran away and tried to get into a white van. The van door would not open, so they ran across the road and into a wooded area. Colorado then made an in-court identification of Appellants as the attackers. (R.p.233-p.241). On re-direct, Colorado testified there was no real argument in the parking lot, only an unprovoked attack by Appellants on Lopez and Solis. (R.p.248-p.250).

Next, the State called Solis to the stand. Solis testified he and his wife Angela went to Vibe around 10:30 p.m. on September 21, 2018, to celebrate their twenty-fifth anniversary as well as a friend's birthday. When they arrived, they said hi to Paula Patina and her husband, Bladimir Acosta, while they waited for the others. Solis said he had known Colorado for seven or eight years and that Colorado was already inside the club when they got there. He noticed Appellants sitting at the bar but did not know them before the night of the incident. Solis was sitting at a table with his group when he saw Lopez come in Vibe through the back door. He

explained the front door was usually closed at twelve o'clock due to a curfew, but the owner still let people come in the back. Lopez was sitting at the bar by himself. Solis got a good look at Appellants because throughout the night they passed him repeatedly when going to and from the restroom. (R.p.252-p.259).

Solis testified Colorado, who was part of his group, walked outside at 2 a.m. when the club officially closed. He said Lopez walked out shortly after, and then Appellants were asked to leave by Acosta because they were causing drama inside the bar. Solis said he was concerned for his friend Colorado, so he went outside against Angela's wishes. When Solis exited the bar, he saw Appellants assaulting Lopez. He testified it appeared they were both punching Lopez, and then when Lopez fell to the ground, they both started kicking him in the head. Solis decided if he did not intervene, Lopez could be killed. He noted Lopez did not have any kind of weapon. Solis tried to push Appellants away from Lopez and then they assaulted him. Solis testified Appellants started stabbing him in the back with their knives so he took off running for his life. He went to the front door of the bar to go back inside but it was locked. He banged on the door asking for help and for someone to call 911 and did not realize until later how badly he was hurt. Solis looked back and saw Appellants running across the street away from Colorado. He testified he felt like his life was in danger and eventually medical personnel arrived at the scene where he was taken to the hospital. Solis said he was stabbed eight or nine times. He identified photographs of the wounds and photographs of the clothing he was wearing the night of the attack and those photos were admitted into evidence without objection. Solis then made an in-court identification of both Appellants. (R.p.260-p.280).

The State then called Angela Solis to the stand. She described the night of the incident, saying she and Solis arrived at the bar around 9:30 or 10:00 p.m. where she saw Appellants

already seated at the bar. Lopez, who she did not know before that night, entered the bar much later, through the back, after 1:30 in the morning. Lopez sat by himself at the bar. Angela did not see any argument inside the bar between Appellants and Lopez—she just saw Lopez get up, say something to Acosta, shake his hand, and leave. Next, she saw Colorado leave the bar. Finally, she heard Acosta ask Appellants to leave and after some fussing, they exited. Angela testified Solis then got up to go outside and look for Colorado. The next thing Angela heard was Solis banging on the door and yelling for someone to call 911. She opened the door over Acosta's objection and when Solis turned around, she saw blood gushing from his back. Angela testified Solis never had a weapon of any kind and she did not see whether Lopez had anything. Angela then described identifying Juan from a photo lineup presented by the police while she was at the hospital with Solis, and she made an in-court identification of both Appellants. (R.p.300-p.318).

Next, Pedro Vasquez testified that he owns a company that paints houses, and that Appellants were working for him as painters on September 21, 2018. He provided Appellants with a work van as well as box cutters they could use to cut floors, paper, plastic, and tape when needed for work. Vasquez said Appellants finished a job Friday and were supposed to return for another job either Saturday or Monday but the only contact he had after the twenty-first was when Juan called to ask if his passport was still in the van. (R.p.323-p.331). On cross-examination Vasquez acknowledged Appellants were Honduran and were in the country illegally. (R.p.331-p.334).

On the third day of trial, May 12, 2022, the State called Master Deputy Jason Cassel of the Greenville County Sheriff's Office to the stand. Cassel was the lead investigator over the incident and got the call to investigate at approximately 3:00 a.m. He and officer trainee Nunez,

who is from the Dominican Republic and speaks Spanish, responded to the scene. Cassel described it as utter chaos, including two victims, Lopez and Solis, with multiple stab wounds and lacerations. Cassel described the various steps in his investigation, including talking to witnesses, trying to track the suspects with a canine unit, asking forensics to check the van for fingerprints, and searching the van, wherein they discovered Juan's passport. He did follow-up investigation at the hospital, which included presenting photo lineups to several witnesses who were able to identify a photo of Juan. Cassel later talked to Vasquez and was contacted by forensics who advised latent prints for both Appellants were found on the van. At that point, Cassel sought and was issued arrest warrants for Appellants, who were eventually located in West Palm Beach, Florida. (R.p.337-p.351). During a lengthy cross-examination, Cassel acknowledged that according to an incident report, a third person who was an acquaintance of Lopez's was also outside when Appellants left the bar, but he never asked Lopez for the identity of that third person. (R.p.375-p.376). Cassel also acknowledged the forensic investigator at the scene noted a trail of blood going to the driver's side door of the van, but that blood was not tested to see if it came back as belonging to either Appellant. (R.p.393-p.394).

Next, Sergeant James McNeely from the Greenville County Sheriff's Office extradition unit took the stand to confirm Appellants were located in, and extradited from, West Palm Beach, Florida. (R.p.403-p.405). Greenville County Deputy Russell Adam Hempell, formerly a crime scene technician in the forensic division then described responding to the incident scene at Vibe. He testified there was a lot of blood at the scene, including trails going towards a white van and a Ford F-350, which belonged to Solis. Hempell found blood on the F-350 but no blood on the van. He photographed various items from the scene, including vehicles and clothing with slash marks on the front and back. Hempell also collected numerous fingerprints from the van

which were then submitted to the crime scene office. (R.p.407-p.420). Next, Greenville County latent print examiner Tyler Buckoltz was qualified as an expert in fingerprint identification. He identified multiple fingerprints from the van as belonging to Luis and Juan. (R.p.433-p.441).

Finally, the State called two paramedics who responded to the incident scene to the stand. Krysal Ashe described treating Solis and transporting him to the hospital. She noted large, deep, gaping wounds on his back, approximately where his kidneys would be, which concerned her. Ashe testified she was concerned for Solis' life and that they transported him with full lights and sirens all the way to the hospital. (R.p.442-p.448). Alaina Armstrong-King described treating Lopez at the scene and transporting him to the hospital. She described multiple stab wounds that required direct pressure to stop the bleeding. Lopez had stab wounds to the back of his head, his abdomen, his back, and his arm. Armstrong-King testified Lopez also had a wound to the neck that was particularly concerning and that they transported Lopez to the hospital with full lights and sirens. (R.p.453-p.458). Upon completion of this testimony, the State rested. (R.p.461, lines 19-20).

Directed Verdict and Right to Testify

Each Appellant separately moved for a directed verdict and after hearing their arguments and the State's respective responses, the trial court denied both motions. (R.p.462-p.466). The trial judge then advised Appellants, outside the presence of the jury, regarding their rights to testify or not testify, stating that if they decided not to testify, the court would instruct the jurors that they cannot give that fact any consideration whatsoever. (R.p.467-p.469). Later, Appellants advised the court they would not testify in their own defense, and they each rested without offering any evidence. (R.p.474-p.476). Appellants renewed their motions for a directed verdict and the trial court again denied those motions. (R.p.477).

Charge Conference – The Hand of One is the Hand of All

During the initial discussion of jury charges, the State requested a charge on "the hand of one is the hand of all." Appellants objected, arguing it was inappropriate in this case under the logic of *State v. King*[4] and *State v. Williams*,[5] because attempted murder is a specific intent crime. They argued there was no way the mens rea of specific intent could travel or be imputed from one defendant to another and therefore the charge should not be given. The State responded that where a co-defendant is involved in the criminal act of the defendant, the specific intent of the defendant's act would apply to the codefendant under the hand of one is the hand of all doctrine in South Carolina, and therefore the charge was proper. The court took the matter under advisement. (R.p.470-p.473). Appellants continued to object to a charge on the hand of one is the hand of all, but the trial judge found the evidence was sufficient for such a charge and that it was appropriate. (R.p.479-p.481).

Charge Conference – Self-Defense

During the initial discussion of jury charges, Appellants requested a self-defense charge and the trial judge said: "All right." (R.p.470, lines 6-8). The following day, May 13, 2022, prior to closing arguments, the State raised an objection to the court charging self-defense, arguing there was nothing in the evidence that would require the charge in this case. Appellants responded that when viewing the evidence in the light most favorable to the non-moving party, there was sufficient evidence to warrant a charge self-defense. They argued that where there were four individuals outside when Appellants walked out of the club, one of whom had a weapon at some point during the altercation, and where the police found a trail of blood going to Appellants van, blood which was never tested for identity, there was sufficient evidence of self-

[4] 422 S.C. 47, 810 S.E.2d 18 (2017).
[5] 427 S.C. 148, 829 S.E.2d 702 (2019).

defense to require the charge.[6] Appellants also argued their extensive impeachment of testimony from the State's witnesses put their credibility sufficiently into question to support giving the charge. (R.p.484-p.486). The trial judge engaged in an extensive discussion with the parties about the lack of evidence to support a self-defense charge, with Appellants response boiling down to the claim that there is only a lack of evidence "because they're (the State's witnesses) all lying about what happened." (R.p.486-p.504, line 4). The trial judge ultimately ruled as follows:

> I hear your arguments. You made good arguments, but I - - I'm going - - I'm not going to charge self-defense. I don't think the evidence supports self-defense in this case and so I am not going to charge that. I note your objections to it and can accept [sic] it, but that's going to be the ruling of the Court.

(R.p.506, lines 14-20).

Closing Arguments, Jury Charge, and Verdict

After the trial court denied Appellants' request for a self-defense charge, the parties made closing arguments. During its close, the State commented: "You will not hear any type of charge to you on the law of self-defense." Appellants objected pursuant to their "preclosing" argument on the self-defense charge. The trial court noted the objection and overruled. (R.p.507, line 12-p.510, line 1). The State continued:

> You will not hear anything about that from the judge who charges you on the law. You may hear a claim from the defense on that. I have first argument because they put up no evidence, which is their right. I will not be able to come back and talk to you after they talk to you, so I need to anticipate and point out things that I think they are going to argue.

(R.p.510, lines2-9). The solicitor then went through a recitation of the State's evidence before asking the jury to convict. (R.p.510-p.532). During that recitation, the solicitor also attempted to

[6] In their brief, Appellants refer to a "four-on-two" ambush, presumably counting Solis as one of the four; however, the testimony consistently indicated Solis came out of the club after the incident between Appellants and Lopez began.

respond to the anticipated self-defense theory posited by Appellants in their opening statement. The solicitor said that if there was going to be a claim of self-defense it would consist of the theory that Solis and Lopez planned an attack on Appellants by having Lopez go outside to wait, with Solis coming out afterwards, and Appellants simply responding to that attack; however, there was no evidence of this theory. (R.p.523, lines 10-19). The solicitor also focused on the injuries to the victims noting: "The injuries are very, very telling. They want to come in here and argue to you self-defense. Let me tell you, self-defense, there's no evidence of that mind you, but that's a blatant act. And for that to be the case that you guys would have to say these defendants have no blame." (R.p.532, lines 6-11). Each Appellant then gave a closing argument, asking for a verdict of not guilty. (R.p.532-p.560).

The trial judge then charged the jury on the indictments, arguments of counsel, the roles of the judge and jury, the separate consideration of co-defendants, the State's burden of proof, the presumption of innocence, reasonable doubt, direct evidence, circumstantial evidence, expert witnesses, credibility of witnesses, criminal intent, accomplice liability, and the verdict forms. (R.p.561-p.580). In regard to criminal intent, the trial court charged the jury as follows:

> In order to establish criminal liability, criminal intent is required. For example, the mental state required to be proven by the State in this case for a particular crime might be purpose, intent, knowledge, recklessness, or criminal negligence.
>
> Criminal intent must be proven by the State beyond a reasonable doubt. Criminal intent is always a matter that must be determined by the jury from the circumstances surrounding the situation. There is no way to prove intent to a mathematical certainty. There is no way medical science can dissect a person's brain and determine what the person had in mind, so the law says criminal intent may be inferred from the circumstances shown to have existed. This is how you make a determination of whether or not the element requiring intent was present. It is not necessary to establish intent by direct and positive evidence, but intent may be established by inference in the same way as any other fact by taking into consideration the acts of the parties and all the facts and circumstances of this case.

> Criminal intent is a mental state, a conscious wrongdoing. It is up to you to determine what the defendants entitled [sic] to do or intended to do based on the circumstances shown to have existed.
>
> Criminal – criminal intent can arise from action or a failure to act. It may arise from negligence, recklessness, or indifference to duty or to consequence that is considered by the law to be the equivalent criminal intent.

(R.p.572, line 7-p.573, line 13). Immediately thereafter, the trial court judge charged the jury on attempted murder, stating in relevant part:

> The defendants are charged with attempted murder. Attempted murder is the performance of an act or acts which intent - - was intended but fail to kill a human being. *In order to prove this crime, the State must prove the defendants had the specific intent to kill and did attempt to kill another person with malice aforethought.*
>
> . . . .
>
> *A specific intent to kill is an element of attempted murder.* Intent means intending the result which actually occurs, not accidentally or involuntarily. To prove attempt, the State must prove that the defendants had the specific intent to commit the underlying offense along with some overt act in furtherance of that intent, and intent may be shown by the acts and conduct of the defendants.

(R.p.573, line 14-p.574, line 20) (emphasis added).

The trial court subsequently charged the jury on accomplice liability including language that "the act of one is the act of all" and "[t]he hand of one is the hand of all." (R.p.575, line10-p.577, line 6). At the conclusion of the charge, Appellants took exception to both: (1) the charge on the hand of one is the hand of all and (2) the refusal to charge self-defense. The trial court said the previous rulings would stand. (R.p.580-p.581).

Verdict and Sentencing

At the end of trial, after deliberating for approximately sixty-eight minutes, the jury gave the trial judge notice that it had reached a verdict. Before that verdict was read and entered, however, the following discussion occurred between the trial court and the parties.

> THE COURT: All right. At the bench conference, we had a discussion that the right to - - or failure of the defendants to testify should not be held against them, and so let me make a couple of comments.
>
> One, I did mention that in the opening charges to the jury as I recall, but the other part of it is, what we're going to do - - what I'm going to explain to them that that part of the charge was not included, and I am going to charge them that and have them go back to the jury room to deliberate if that makes any difference.
>
> Anything from the State on that?
>
> MR. RICHARDSON: That's the way we think it should be done.
>
> THE COURT: All right. And same from the defense? *Anything from the defense?*
>
> MS. GORSKI: *No, thank you, Your Honor.*
>
> MR. WATSON: *That's fine.*

(R.p.582, line 3-p.583, line 3) (emphasis added). After a brief recess, the discussion continued.

> THE COURT: All right. Back on the record. Looking at my opening charge, and I did not include that in my opening charge. So, again, what we're going to do is bring the jury back out. I'm going to charge them on the failure - - or on the defendant's right to remain silent. I will send them back to continue. The verdict has not been read and entered, so we're going to receive some notice from them, so that's what we're going to do. Any objection from the State?
>
> MR. RICHARDSON: None from the State, Your Honor.
>
> THE COURT: *Anything from the defense?*
>
> MS. GORSKI: *None, Your Honor.*
>
> MR. WATSON: *None, Your Honor.*

(R.p.583, lines 6-21) (emphasis added). The trial court then proceeded to charge the jury on Appellants' rights to remain silent and that their decision not to testify must not be considered by

the jurors in any way. After the charge the jury resumed deliberations, the trial court asked if there were any exceptions. Again, no exceptions or objections were made by the State or the defense. After deliberating for six more minutes, the jury notified the trial court that it had reached a verdict. For a third time, neither the State nor the defense made an objection. (R.p.583, line 22-p.586, line 15).

The jury found Appellants guilty as indicted. They were sentenced by Judge Morgan to twenty-five (25) years' concurrent imprisonment for each count of attempted murder, and five (5) years' concurrent imprisonment for each count of possession of a weapon during the commission of a violent crime. (R.p.12-39; p.590-p.598).

ARGUMENT

I.

The trial court properly declined to instruct the jury on self-defense because the evidence and testimony presented during trial did not establish any of the required elements of self-defense and, instead, established Appellants, without provocation, unlawfully attempted to kill the two unarmed victims by repeatedly stabbing and slashing them with box-cutters, causing life-threatening injuries that required immediate medical attention.

Appellants argue the trial court erred in denying their request to charge the jury on self-defense because there was ample evidence in the record from which it could reasonably be inferred that they acted in self-defense. They contend this evidence consisted of: (1) past difficulties inside the club shortly before the incident between Appellants on one side, and Lopez, Solis, and Colorado on the other; (2) inferences that could be drawn that Appellants were deliberately ambushed in a surprised attack which was "facilitated by the Club owner who forced them out of the Club and locked the door behind them;" (3) inferences that could be drawn that Appellants had a reasonable fear of serious bodily injury from a "four-on-two ambush" by men under the influence of alcohol; and (4) a trail of blood leading to Appellants' van "showing they were injured and bleeding as they tried to escape the ambush." (Brief of Appellants p.9-p.13). To the contrary, the only testimony and evidence presented during trial established Appellants, without provocation, attempted to kill the two unarmed victims by repeatedly stabbing and slashing them with box-cutters, causing life-threatening injuries that required immediate medical attention. Neither Appellant testified in his own defense nor offered any other evidence to refute that version of events or support an alternative version of events that could have supported a conclusion they acted in self-defense during the incident. (R.p.474-p.476). Furthermore, no testimony or evidence was elicited during the State's case to establish Appellants ever asserted

they acted in self-defense at any point in time. Because no testimony or evidence was presented to establish the required elements of self-defense, the trial judge properly declined to instruct the jury on self-defense. Appellants' convictions should be affirmed.

Standard of Review

In criminal cases, an appellate court sits to review only errors of law, and it is bound by the trial court's factual findings unless they are clearly erroneous. *State v. Brown*, 401 S.C. 82, 87, 736 S.E.2d 263, 265 (2012), *cert. denied*, 569 U.S. 1023 (2013); *State v. Wilson*, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001). On appeal, an appellate court reviewing a trial judge's jury charge must view the charge as a whole and in light of the evidence and issues from trial. *State v. Simmons*, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009); *see Todd v. State*, 355 S.C. 396, 402, 585 S.E.2d 305, 308 (2003) ("[J]ury charges should be examined in their entirety and not in isolation[.]"). The appellate court will only reverse a trial judge's decision regarding jury instructions when that decision constituted a prejudicial abuse of discretion. *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000); *Rauch v. Zayas*, 284 S.C. 594, 597, 327 S.E.2d 377, 378 (Ct. App. 1985). An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. *Brown* at 87, 736 S.E.2d at 265; *State v. Jennings*, 394 S.C. 473, 477-78, 716 S.E.2d 91, 93 (2011); *State v. Morris*, 376 S.C. 189, 205-06, 656 S.E.2d 359, 368 (2008). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial judge's ruling is supported by any evidence. *Wilson* at 6, 545 S.E.2d at 829. Meanwhile, if the jury instructions presented were substantially correct and covered the applicable law, the trial judge's decision will not be reversed on appeal. *State v. Ezell*, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct. App. 1996).

The law to be charged is determined from the evidence presented at trial. *State v. Rivera*, 389 S.C. 399, 404, 699 S.E.2d 157, 159 (2010); *State v. Holland*, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). "No instruction should be given by the trial judge, at the request of the appellant, which tenders an issue which is not presented or supported by the evidence." *State v. Weaver*, 265 S.C. 130, 137, 217 S.E.2d 31, 34 (1975). The trial court only commits reversible error if it fails to give a requested charge on an issue raised by the evidence. *State v. Hill*, 315 S.C. 260, 262, 433 S.E.2d 838, 849 (1993).

Analysis

A self-defense charge is not required unless it is supported by the evidence. *State v. Light*, 378 S.C. 641, 649, 664 S.E.2d 465, 469 (2008) (citing *State v. Goodson*, 312 S.C. 278, 440 S.E.2d 370 (1994)). "If there is any evidence in the record from which it could reasonably be inferred that the defendant acted in self-defense, the defendant is entitled to instructions on the defense, and the trial judge's refusal to do so is reversible error." *Light*, 378 S.C. at 650, 664 S.E.2d at 469 (citing *State v. Slater*, 373 S.C. 66, 644 S.E.2d 50 (2007)); *State v. Frazier*, 401 S.C. 224, 233, 736 S.E.2d 301, 306 (Ct. App. 2013). To prove entitlement to a self-defense charge, the record must contain evidence of four elements:

> (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) if his defense is based upon his belief of imminent danger, the defendant must show that a reasonably prudent person of ordinary firmness and courage would have entertained the belief that he was actually in imminent danger and that the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or the loss of his life; and (4) the defendant had no other probable means of avoiding the danger.

Light, 378 S.C. at 649, 664 S.E.2d at 469; *State v. Goodson*, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1994). It is axiomatic all four elements of self-defense must be established in order for that defense to apply. *State v. Bixby*, 388 S.C. 528, 554, 698 S.E.2d 572, 586 (2010).

When determining whether the issue of self-defense should be submitted to the jury, the trial judge must look to the evidence actually introduced during trial because "[t]he law to be charged to the jury is determined by the evidence presented at trial." *Goodson*, 312 S.C. at 280, 440 S.E.2d at 372. If any evidence of self-defense is presented, the trial judge should instruct the jury on self-defense in the event such an instruction is requested. *State v. Hill*, 315 S.C. 260, 261, 433 S.E.2d 848, 849 (1993); *see Stone v. State*, 294 S.C. 286, 287, 363 S.E.2d 903, 904 (1988) ("Upon request, a defendant is entitled to a jury instruction on self-defense *if he has produced evidence tending to show the four elements of that defense*." (emphasis added)). Conversely, if no evidence is presented to support the issue of self-defense, the trial judge should *not* present a self-defense instruction to the jury. *State v. Slater*, 373 S.C. 66, 69, 644 S.E.2d 50, 52 (2007); *see State v. Wigington*, 375 S.C. 25, 31, 649 S.E.2d 185, 188 (Ct. App. 2007) ("A jury charge on self-defense is not required unless it is supported by the evidence."); *see also State v. Blurton*, 352 S.C. 203, 208, 573 S.E.2d 802, 804 (2002) ("If a jury instruction is provided to the jury that does not fit the facts of the case, it may confuse the jury. Only law applicable to the case should be charged to the jury. Instructions that do not fit the facts of the case may serve only to confuse the jury.").

Here, the testimony and evidence presented during trial did not establish the required elements of self-defense. Regarding the first element, as to who was at fault for bringing on the difficulty, all the trial testimony established Appellants followed Lopez from the club and attacked him with box cutters, then attacked Solis when he intervened to try to render aid to

Lopez. No testimony was presented to establish a contrary version of events in which Appellants were not the persons responsible for the violence outside the club. Under these circumstances, the evidence and testimony presented only supported a conclusion Appellants brought about the difficulty that transpired, which meant Appellants could not validly raise a claim of self-defense. *See State v. Santiago*, 370 S.C. 153, 160, 634 S.E.2d 23, 27 (Ct. App. 2006) (finding a self-defense jury instruction was not warranted where the evidence presented did not support a finding Santiago was without fault for bringing about the difficulty). Furthermore, due to the absence of any testimony from Appellants regarding their account of the incident, there was no evidence or testimony presented establishing Appellants stabbed Lopez and Solis in order to defend themselves from imminent danger of losing their lives or sustaining serious bodily injuries. *See State v. Bruno*, 322 S.C. 534, 536, 473 S.E.2d 450, 452 (1996) ("Bruno was not entitled to a self-defense charge, because he presented no evidence that he believed he was in imminent danger of losing his life or sustaining serious bodily injury."). Because no testimony or evidence was presented that established the required elements of self-defense, Appellant was simply not entitled to a jury instruction on that defense. *See Goodson*, 312 S.C. at 280, 440 S.E.2d at 372 (finding the trial judge committed no error by declining to instruct the jury on self-defense where no evidence was presented establishing several of the required elements of self-defense).

Relying in part on *State v. Day*, 341 S.C. 410, 535 S.E.2d 431 (2000), Appellants first contend a charge on self-defense was supported by the fact they had an argument with Lopez inside the club shortly before the incident, which would constitute "past difficulties." However, "past difficulties" means a prior incident that would cause a defendant to have a reasonable belief of imminent danger from the victim to support the defendant's version of an incident. In

Day, the defendant "presented an evidenced based theory as to what occurred that evening." *Day* at 417, 535 S.E.2d at 435. In regard to past difficulties, Day testified to "prior instances of violence or unprovoked aggression" such as the fact the victim "had previously pulled a gun on [Day]" and the victim "was in a drug induced paranoia the day of the incident." *Day* at 418, 535 S.E.2d at 435. Here, Appellants did not present any evidence-based theory as to what occurred on the night of the incident. Further, they only evidence of the purported "past difficulty" presented at trial was that, in response to a song playing at Vibe, Lopez said to the owner, "what an ugly song," to which one Appellant responded, "shut up your mouth you little Colombian son of a bitch." (R.p.186, lines 2-15). This is simply not an instance of violence or unprovoked aggression by Lopez, and certainly not sufficient evidence to justify a jury charge on self-defense in the context of this case.

Appellants additionally maintain a charge on self-defense was warranted because they were not at fault for bringing on the difficulty, arguing the evidence could have supported a conclusion they were the victims of a deliberate ambush or surprise attack. Yet, the testimony presented during trial established that the *only* ambush or surprise attack was committed by Appellants against Lopez. Absolutely no testimony was offered to support Appellants theory of being attacked by Lopez, Colorado, or others as Appellants left the club.

Next, Appellants contend a charge on self-defense was warranted because they had a right to act on appearances rather than waiting to be attacked before acting. However, similar to their claim about not being at fault, no testimony was offered to explain what the purported "appearances" were, or how those appearances created a *reasonable* fear of bodily injury from a group of people. Consequently, speculation and conjecture about possible fear did not justify a charge on an otherwise unsupported theory of self-defense. *See Barber v. State*, 393 S.C. 232,

236, 712 S.E.2d 436, 438-439 (2011) (recognizing there must be some evidence presented on a particular issue in order to warrant a jury instruction on that issue while speculation based on the possibility "the jury may believe some of the evidence and disbelieve other evidence" is not sufficient to warrant an instruction); *State v. Funchess*, 267 S.C. 427, 430, 229 S.E.2d 331, 332 (1976) (explaining the presence of evidence "determines whether [an issue] should be submitted to the jury and the 'mere contention that the jury might accept the State's evidence in part and might reject it in part will not suffice'").

Accordingly, because none of the evidence and testimony presented during trial supported a conclusion Appellants were acting in self-defense at the time they stabbed Lopez and Solis, a self-defense instruction was not warranted in Appellants' case. *See Slater*, 373 S.C. at 69, 644 S.E.2d at 52 ("A self-defense charge is not required unless it is supported by the evidence."). As a result, the trial judge committed no error by declining to instruct the jury on a legal theory wholly unsupported by any of the evidence and testimony presented during trial. *See State v. Bryant*, 336 S.C. 340, 345-46, 520 S.E.2d 319, 322 (1999) ("[Bryant]'s statements fail to establish the elements of self-defense entitling [Bryant] to a self-defense charge. No question of fact for the jury is created on this issue. . . . Accordingly, [Bryant] was not entitled to a self-defense charge and the trial judge correctly refused the charge."). For all of these reasons, Appellants' convictions should be affirmed.

II.

The trial court properly charged the jury on accomplice liability and the theory of "the hand of one is the hand of all" for the specific intent crime of attempted murder. In any event, the trial court did not err because the jury charge, as a whole, was substantially correct and adequately covered the law applicable to the case. Finally, any possible error was harmless in this case because, beyond a reasonable doubt, it did not contribute to the jury's verdict.

Appellants argue the trial court erred in charging the jury on accomplice liability for attempted murder because it is a specific intent crime. Relying heavily on *State v. King*, 422 S.C. 47, 810 S.E.2d 18 (2017), and cases from other jurisdictions, they contend that "transferring the intent to kill" from one of them to the other would not satisfy the necessary *mens rea* for the accomplice, and that although the court instructed that specific intent was a necessary element of attempted murder, it failed to instruct that specific intent was also necessary to convict either of them under a theory of accomplice liability. Appellants also argue the trial court's charge on criminal intent, which included language about knowledge, recklessness, and criminal negligence was irrelevant and inapplicable to attempted murder and may have been confusing to the jury. Ultimately, Appellants argue the trial court should have charged that, to convict either Appellant as an accomplice, the accomplice must have specifically intended that the victim be killed when he aided the principal's crime of attempted murder. (Brief of Appellants, p.13-p.18). The State submits Appellant's argument is misplaced and not supported by South Carolina law.

The accomplice liability jury charge on "the hand of one is the hand of all" is an appropriate jury charge for a specific intent crime. Furthermore, when considered as a whole, the jury charge given in this case was substantially correct and adequately covered the law by emphasizing that to convict either Appellant of attempted murder, the State was required to prove they had a specific intent to kill. Finally, even if this Court determines as a matter of first

impression that an accomplice liability charge on "the hand of one is the hand of all" is generally improper in a prosecution for attempted murder, the error was harmless in this case because, beyond a reasonable doubt, the error did not contribute to the jury's verdict.

Standard of Review

The standard of review set forth in Argument I above is hereby incorporated by reference rather than being repeated here.

Analysis

Initially, Appellants' reliance on *King* is misplaced. *King* held that a conviction for attempted murder requires proof that a defendant had a specific intent to kill, and that it was error to charge the jury that specific intent to kill was *not* an element of attempted murder; however, the opinion did not address the propriety of an accomplice liability charge for attempted murder. Similarly, Appellants' reliance on *State v. Williams*, 427 S.C. 148, 829 S.E.2d 702 (2019) and similar cases is misplaced because they deal with transferred intent, not accomplice liability. Historically, South Carolina courts have applied the doctrine of transferred intent in finding a defendant guilty of manslaughter or murder, typically applying it when the defendant, acting with malice and an intention to kill one person, misses his intended target and mistakenly kills an unintended victim. In these cases, the defendant's criminal intent to kill the intended victim—his mental state of malice—transfers to an unintended victim. *See State v. Heyward*, 197 S.C. 371, 377, 15 S.E.2d 669, 672 (1941) (affirming murder conviction of a defendant who mistakenly shot and killed a police officer when the defendant believed the officer to be an assassin sent by a former employee). Although this Court had twice answered in the affirmative when considering whether the doctrine of transferred intent applies to attempted murder which requires specific intent, the relevant portions of both cases were either vacated or not adopted by our Supreme

Court, and this Court has now concluded the doctrine of transferred intent is inapplicable as to an attempted murder charge. *State v. Geter*, 434 S.C. 557, 563-67, 864 S.E.2d 569, 572-73 (Ct. App. 2021), *cert. granted*, *State v. Geter*, Order (S.C. Sup. Ct. filed September 7, 2022).

Whatever our Supreme Court ultimately determines, the issue of transferring a specific intent from one victim to another victim is separate and distinct from the issue of whether a defendant's accomplice can be liable for a specific intent crime under the theory of "the hand of one is the hand of all." In South Carolina, in the context of a directed verdict, this Court has recognized the propriety of the charge for a specific intent crime—attempted armed robbery. *State v. Thompson*, 374 S.C. 257, 262-64, 647 S.E.2d 702, 705-06 (Ct. App. 2007). In *Thompson*, after acknowledging attempted armed robbery requires a specific intent to commit armed robbery, this Court held: "Under the hand of one is the hand of all theory of accomplice liability, acts committed by Sturkey are imputed to Thompson, making him guilty of any acts done incidental to the execution of the common design or scheme of the crime." *Id.* at 263-64, 647 S.E.2d at 706. Charging the jury on the hand of one is the hand of all theory of accomplice liability was likewise proper for attempted murder, also a specific intent crime. The trial court did not err.

Furthermore, when considered as a whole rather than focusing on the accomplice liability charge in isolation, the charge was proper because it was substantially correct and adequately covered the law. Indeed, as recognized by Appellants, the trial court charged that to convict either Appellant of attempted murder, the State was required to prove they had the specific intent to kill. It instructed:

> The defendants are charged with attempted murder. Attempted murder is the performance of an act or acts which intent - - was intended but fail to kill a human being. *In order to prove this crime, the State must prove the defendants*

> *had the specific intent to kill and did attempt to kill another person with malice aforethought.*
>
> . . . .
>
> *A specific intent to kill is an element of attempted murder.* Intent means intending the result which actually occurs, not accidentally or involuntarily. To prove attempt, the State must prove that the defendants had the specific intent to commit the underlying offense along with some overt act in furtherance of that intent, and intent may be shown by the acts and conduct of the defendants.

(R.p.573, line 14-p.574, line 20) (emphasis added). This charge eliminated any possible confusion allegedly created by the accomplice liability charge. The trial court did not err in charging the hand of one is the hand of all.

Harmless Error

When considering whether an error with respect to jury instructions was harmless, the appellate court must determine beyond a reasonable doubt that the error complained of did not contribute to the verdict. *State v. Perry*, 440 S.C. 396, 408, 892 S.E.2d 273, 279 (2023). Here, even assuming the trial judge erred by failing to inform the jury that accomplice liability for attempted murder must include a specific intent to kill, Appellants could not possibly have suffered any prejudice because the jury could have reached no other conclusion but that both Appellants had a specific intent to kill the victim. The evidence reflected that each Appellant actively participated in repeatedly cutting and stabbing Lopez and Solis with box cutters, primarily in their backs. Appellants' conduct left no doubt about their specific intent to kill the victims. *See State v. Sutton*, 340 S.C. 393, 397 n.5, 532 S.E.2d 283, 285 n.5 (2000) ("A specific intent to kill may be, and normally is, inferred from the surrounding circumstances, such as the character of the attack, the use of a deadly weapon, and the nature and extent of the victim's injuries."); 41 C.J.S. *Homicide* § 179 (intent to kill may be inferred from the character of the assault, the use of a deadly weapon with an opportunity to deliberate, or the use of a dangerous

or deadly weapon in a manner reasonably calculated to cause death or great bodily harm; intent may be inferred when it is demonstrated that the accused voluntarily and willfully commits an act, the natural tendency of which is to destroy another's life). This harmlessness of any error is even more apparent considering that, in its closing argument, the State *did not* tell the jury that a specific intent to kill was *not* required for accomplice liability. Indeed, where the solicitor *never* even uttered the phrase "the hand of one is the hand of all," the accomplice liability charge could not have contributed to the verdict beyond a reasonable doubt. *Compare Rosales v. Indiana*, 23 N.E.3d 8, 15-16 (2015) (concluding that if the State had not repeatedly misstated the law the court likely would have found an insufficient likelihood of prejudice from the instruction, but the State's repeated insistence that the defendant's specific intent to kill did not matter, coupled with the inaccurate jury instruction on accomplice liability, was enough to make a fair trial impossible and constitute fundamental error). Because the State's version of the facts demonstrated beyond a reasonable doubt that both Appellants had the specific intent to kill the victims, and the State did not rely on accomplice liability in its close, Appellants could not have suffered prejudice even assuming the trial court's accomplice liability charge was erroneous. *See State v. Jefferies*, 316 S.C. 13, 23, 446 S.E.2d 427, 433 (1994) (erroneous charge harmless where it does not contribute to the verdict). Appellants are not entitled to reversal on this ground.

III.

Appellants' argument that the trial court erred in failing to charge the jury that he had the right to remain silent is not preserved for appellate review because it was neither raised to nor ruled upon by the trial court during trial. Even if preserved, the trial court cured any possible error by properly charging the jury on the right to remain silent and not to testify prior to the final verdict being read and entered, thus rendering the charge substantially correct and adequate in covering the law applicable to the case. Furthermore, any possible error was harmless because it would not have affected the jury's deliberations or contributed to the verdict.

Appellants argue the trial court erred in failing to charge the jury that they had the right to remain silent, and that this error was not cured by charging the jury on this right after it reached its verdict. They contend trial court's decision to give the charge and then instructing the jury to continue its deliberations *after* the jury had already notified the court it had reached a verdict was not sufficient to fulfill the court's constitutional obligation to minimize the danger that the jury gave evidentiary weight to their failure to testify. Appellants argue that where the jury was told in opening statements (by Juan's counsel) that Appellants acted in defense of their own lives, and then no testimony was presented in support of that claim, the failure to testify loomed large and therefore the omitted jury instruction could not have been harmless. They further argue "the State exacerbated this error by commenting in its closing on the lack of self-defense and how the Appellants 'put up no evidence.'" (Brief of Appellants p.18-p.21). The State disagrees and submits Appellants arguments should be rejected as unpreserved or alternatively denied on the merits.

Issue not Preserved for Appeal

First and foremost, Appellants complaint about the lack of an adequate jury charge on their right to remain silent is simply not preserved for appellate review. In order for an issue to be preserved for appellate review, the issue must have been: (1) raised to and ruled upon by the

trial court; (2) raised by the Petitioner; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. *State v. Rogers*, 361 S.C. 178, 183, 603 S.E.2d 910, 912-13 (Ct. App. 2004). "If a party fails to properly object, the party is procedurally barred from raising the issue on appeal." *State v. Johnson*, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005). Regarding the requirement that a timely objection be raised, a defendant must make a contemporaneous objection to a perceived error during trial in order to preserve the issue for further review. *State v. Hoffman*, 312 S.C. 386, 393, 440 S.E.2d 869, 873 (1994). Thus, when a perceived error arises, the defendant must object at the first opportunity to do so, or the issue is waived. *State v. Sullivan*, 310 S.C. 311, 314, 426 S.E.2d 766, 768 (1993). Indeed, an issue may not be raised for the first time in a post-trial motion when it could have been raised at trial. *State v. Hamilton*, 333 S.C. 642, 648, 511 S.E.2d 94, 96-97 (Ct. App. 1999); *Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). The issue preservation requirement also applies to assertions of constitutional violations. *State v. Passmore*, 363 S.C. 568, 584, 611 S.E.2d 273, 282 (Ct. App. 2005).

Appellants first raised this argument in their post-trial motions for a new trial (Motions for a New Trial dated and filed May 20, 2022, and May 25, 2022); therefore, this issue is not preserved for consideration by this Court and should be dismissed. In any event, the argument is without merit because the jury charge, when considered as a whole, was correct and adequately covered the law. Any possible error in the initial failure to give the charge was cured by the trial court's actions in subsequently charging the jury on the right to remain silent. Finally, any possible error was harmless beyond a reasonable doubt. Appellants conviction should be affirmed.

Standard of Review

The standard of review set forth in Argument I above is hereby incorporated by reference rather than being repeated here.

Analysis

Under the United States and South Carolina Constitutions, a criminal defendant has a right to remain silent and to not testify during his trial. U.S. Const. amend. V; S.C. Const. art. I, § 12; *State v. Weaver*, 361 S.C. 73, 88, 602 S.E.2d 786 (Ct. App. 2004). Exercise of that constitutional right may not be used against him. *State v. Shuler*, 353 S.C. 176, 577 S.E.2d 438 (2003). If an improper comment was made, the trial court's instruction to the jury that it may not consider the failure to testify in any way and may not use it against the defendant may be sufficient to cure any potential error. *Johnson v. State*, 325 S.C. 182, 188, 480 S.E.2d 733, 735-36 (1997). This jury instruction on the defendant's right to remain silent and to not testify is sometimes referred to as a "no adverse inference charge." *See, e.g., State v. Arthur*, 290 S.C. 291, 298, 350 S.E.2d 187, 191 (1986). Our United States Supreme Court has held that a state trial judge has a constitutional obligation, upon proper request, to minimize the danger that the jury will give evidentiary weight to a defendant's failure to testify by giving a "no adverse inference" instruction. *Carter v. Kentucky*, 450 U.S. 288, 305 (1981).

Here, the trial court acknowledged it failed to give a "no adverse inference" instruction on Appellants' right to remain silent either in the preliminary charge to the jury or in the full jury charge at the end of trial prior to deliberations. (R.p.582-p.583). However, upon recognizing this mistake, the trial court, with consent of the parties, brought the jury back prior to entry of a verdict, and gave a thorough "no adverse inference" charge on Appellants right to remain silent and not to testify. The trial court further instructed the jury to continue their deliberations with

the "no adverse inference" charge in mind. (R.p.583, line 24-p.585, line 12). Appellants did not take exception to these additional instructions or to the verdict rendered after further deliberations. (R.p.585, lines 15-20; p.586, lines 10-13). As a result, the additional instructions became part of the overall instructions given to the jury. Those overall instructions, when considered as a whole, were entirely proper because they were correct and adequately covered the law—including the fact that no adverse inference should be drawn from Appellants' failure to testify. The trial court effectively cured any possible error in its initial failure to give the charge by subsequently charging the jury on the right to remain silent and the right not to testify. Thus, the trial court *did* properly charge the jury on Appellants' rights to remain silent and there was no error.

Harmless Error

Even if the trial court somehow erred in the overall jury charge or procedure by giving the "no adverse inference" charge *after* a period of deliberation, any possible error was harmless beyond a reasonable doubt because the error was not prejudicial to Appellants. To reverse a criminal conviction on the basis of an erroneous jury instruction, the appellate court must find the error was a prejudicial error. *State v. Bowers*, 436 S.C. 640, 646, 875 S.E.2d 608, 611 (2022). Prejudicial error in a jury instruction is an error that contributed to the jury verdict. *Id.* The question that must be addressed is not whether the error was harmless beyond a reasonable doubt because of overwhelming evidence of guilt; rather, the question is whether the erroneous jury charge affected the jury's deliberations and, thus, contributed to the verdict. *Id.* at 646-47, 875 S.E.2d at 611. If the appellate court has any reasonable doubt as to whether the erroneous charge contributed to the verdict, it must reverse the conviction. *Id.* To determine whether the erroneous jury charge contributed to the verdict the court must attempt to determine how the jury

understood the jury instruction. *Id.* at 647, 875 S.E.2d at 611. The appropriate test involves determining what a reasonable juror would have understood the charge to mean. *Id.*

At the conclusion of Appellants' trial, if the jury had reached a final verdict after deliberating with *no instruction* at all on the right to remain silent, the erroneous omission would likely have contributed to that verdict because a reasonable juror would not have understood there was a prohibition on making an adverse inference due to the failure to testify. But here, before the final verdict was reached and entered, the trial court gave the jury an individual instruction on that right, telling the jurors the decision not to testify: "must not be considered by you in any manner" and emphasized "you are to draw no conclusions whatsoever from the fact that defendants in this case did not testify." (R.p.584, line 13-p.585, line 5). If anything, this specific instruction, given *separate* from the general instructions and *after* a period of deliberation and notification of a verdict, served to highlight or emphasize Appellants rights. It drew special attention to the "no adverse inference" rule, ensuring that if the jury had improperly considered this before, they must return and further deliberate with the highlighted rights in mind. A reasonable juror would not only have understood the jury charge as a whole, he or she would have given heighted scrutiny to the right to remain silent and would have reconsidered any prior thoughts he or she had about an appropriate verdict in light of that right before rendering a final verdict. Consequently, the alleged error in the jury charge did not contribute to the guilty verdicts and could not have prejudiced Appellants. *Bowers* at 646-47, 875 S.E.2d at 611. Any possible error was harmless beyond a reasonable doubt. For all of these reasons, Appellants' arguments should be rejected and their convictions should be affirmed.

IV.

The trial court properly denied Appellants' pretrial motions to dismiss where Appellants failed to establish any *Brady* or other due process violations because they failed to demonstrate the information or evidence at issue was favorable to Appellants or that it was material to their guilt or innocence, or was impeaching.

Appellants argue the State failed to disclose information and evidence in violation of *Brady* and Rule 5, SCRCrimP, requiring reversal.[7] They argue this violated their fundamental rights to a fair trial and due process and complain that the State failed to disclose two key types of information or evidence. First, Appellants contend the State, including law enforcement, had a duty to preserve evidence of self-defense and that it failed to uphold that duty when it did not preserve or disclose evidence or information regarding their alleged injuries. Appellants argue law enforcement records from their arrest in Florida would have included statements regarding their medical condition and that the State had the duty to learn of this favorable evidence known to Florida law enforcement. They further argue the body-worn camera recording taken by Officer Urbina three weeks after the incident, at the time of their arrest in South Carolina and following their extradition from Florida, would have shown any injuries they still had, claiming the exculpatory value of the video was apparent before it was "destroyed." Second, Appellants contend the State had a duty to preserve impeachment evidence and that it failed to uphold that duty when it did not preserve or disclose the body-worn camera recording taken by Officer Cassel when he interviewed witnesses to the incident at the hospital. They argue the exculpatory

[7] At trial, Appellants argument focused entirely on *Brady* and due process, with no mention of Rule 5, SCRCrimP. Thus, the Rule 5 portion of the claim now raised on appeal is not preserved for appellate review because it was neither raised to nor ruled upon by the trial court. *Rogers* at 183, 603 S.E.2d at 912-13; *See also State v. Patterson*, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) (noting an appellant is limited on appeal solely to the grounds raised during trial); *State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) (instructing a defendant cannot raise one argument in support of an issue at trial and then raise a different argument in support of that issue to the appellate court); *State v. Thomason*, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) ("[A] party cannot argue one theory at trial and a different theory on appeal.").

impeachment value of the recording was apparent before it was "destroyed" because translations were taking place as to multiple witnesses, and claim they could not have obtained evidence of comparable value by any other means. (Brief of Appellants, p.21-p.26).

The State disagrees and submits Appellants arguments are entirely without merit because they failed to show any of the information was favorable to Appellants, much less that it was material to guilt or punishment, or that it would have been impeaching in any way. Additionally, to the extent the information or evidence was arguably lost or destroyed, Appellants failed to show this was either done in bad faith, or that the evidence possessed an exculpatory value apparent before it was destroyed and that no other evidence of comparable value could be obtained by other means. Because Appellants failed to demonstrate a *Brady* or other due process violation occurred, the trial court properly denied their motions to dismiss.

Standard of Review

In criminal cases, appellate courts sit to review errors of law only. *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). "On appeal, the trial court's ruling will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law." *State v. Sheldon*, 344 S.C. 340, 342, 543 S.E.2d 585, 585-586 (Ct. App. 2001). An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. *State v. Jennings*, 394 S.C. 473, 477-78, 716 S.E.2d 91, 93 (2011); *State v. Elders*, 386 S.C. 474, 480, 688 S.E.2d 857, 861 (Ct. App. 2010).

Analysis

The *Brady* disclosure rule requires that the prosecution provide the defendant with any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment. *Pennsylvania v. Ritchie*, 480 U.S. 39, 57 (1987); *Hyman v. State*, 397 S.C.

35, 45, 723 S.E.2d 375, 380 (2012); *State v. Anderson*, 407 S.C. 278, 286, 754 S.E.2d 905, 909 (Ct. App. 2014). Favorable evidence is either favorable exculpatory evidence or favorable impeachment evidence. *United States v. Bagley*, 473 U.S. 667, 676 (1985); *Anderson* at 287, 754 S.E.2d at 909. Materiality of evidence is determined based on the reasonable probability that the result of the proceeding would have been different had the evidence been disclosed to the defense. *Hyman*, 397 S.C. at 45, 723 S.E.2d at 380; *Anderson*, 407 S.C. at 287, 754 S.E.2d at 909. A reasonable probability is shown when the government's evidentiary suppression undermines confidence in the outcome of the trial. *Hyman*, 397 S.C. at 45-46, 723 S.E.2d at 380; *Anderson* at 287, 754 S.E.2d at 909. Furthermore, the prosecution has the duty to disclose such evidence even in the absence of a request by the accused. *United States v. Agurs*, 427 U.S. 97 (1976); *Hyman* at 46, 723 S.E.2d at 380; *Porter v. State*, 368 S.C. 378, 384, 629 S.E.2d 353, 356 (2005). Thus, an individual asserting a *Brady* violation must demonstrate that evidence was: (1) favorable to the accused; (2) in the possession of or known by the prosecution; (3) suppressed by the State; and (4) material to the accused's guilt or innocence, or was impeaching. *Kyles v. Whitley*, 514 U.S. 419 (1995); *Riddle v. Ozmint*, 369 S.C. 39, 44, 631 S.E.2d 70, 73 (2006). The mere possibility that an item of undisclosed information may have been helpful to the defense in its own investigation is insufficient to establish constitutional materiality under *Brady*. *Agurs* at 109-10. When the exculpatory value of undisclosed information is entirely speculative, it does not fall within the rule enunciated by *Brady*. *Anderson* at 287, 754 S.E. 2d at 909.

Appellants have failed to show how the trial court's ruling violated their due process rights or that the purported information from either the Florida paperwork or the body-worn camera recordings contained anything favorable, exculpatory, material, or impeaching. The United States Supreme Court has emphasized:

> The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. A "reasonable probability" of a different result is accordingly shown when the government's evidentiary suppression "undermines confidence in the outcome of the trial."

Kyles at 434 (quoting *Bagley* at 678). As our supreme court has noted, the burden is clearly on Appellant to establish the evidence was favorable and material such that there existed a reasonable probability he failed to receive a fair trial. *Gibson v. State*, 334 S.C. 515, 525, 514 S.E.2d 320, 325 (1999).

In the instant case, Appellants never established the required showings. Their arguments regarding the Florida records and body-worn camera recordings, which they claim could possibly show injuries or provide impeachment material, were all rank speculation and hypothetical. Their discussions of the evidence included comments acknowledging they did not know whether the information was favorable or material and prefacing their statements with limitations. These included statements that: "physical evidence that *could've* been caught on the body camera," "*we don't know* what the conversation was had with our clients," "*we don't know* what our clients look like at the time of the warrant," "*we don't know* medical pictures, were there photographs taken?," "whoever picked them up in Florida would had to have written some report about, did they say something?," "seeing the value of what was said or what was written in Florida *may be* of even greater importance;" "a report that would memorialize the events, the time, who, what. Only because *we don't know*." (R.p.90, lines 7-8; p.94, lines 4-6; p.112, lines 7-11; p.114, lines 20-22) (emphasis added). Appellants admitted what the evidence might show "cannot be shown with certainty" and that its exculpatory value "cannot be apparent to anyone but the State prior to its disappearance." (R.p.89, lines 12-17).

Yet, Appellants had the opportunity to document or record any injuries they received during the incident at any time between that incident and their arrest. They also could have had any such injuries fully recorded or documented had they: (1) remained at the scene rather than fleeing into the woods after stabbing Lopez and Solis or (2) promptly turned themselves in to law enforcement after initially fleeing. Further, any serious injuries would have required immediate medical attention and Appellants were the ones with the opportunity to obtain evidence related to their seeking medical treatment between the time of the incident and their arrests. Instead of offering any information to the trial judge to support the claim that State's evidence would in fact be favorable, Appellants relied solely on their argued speculation of what the records or recordings could contain. In their brief, they never point to any nondisclosed information which is demonstrably exculpatory or impeaching, nor do they point to testimony or evidence directly supporting the claim that they were injured. As with the remainder of their argument, the trail of blood leading to their van is entirely speculative without more. It likely dripped from the box cutters Appellants used to stab Lopez and Solis before they ran to the van in an attempt to flee after the assault. As the United States Supreme Court stated: "The mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish 'materiality' in the constitutional sense." *United States v. Agurs*, 427 U.S. 97, 109–10 (1976); *Cone v. Bell*, 556 U.S. 449, 491 (2009) ("It simply is not sufficient, therefore, to claim that 'there is a reasonable possibility that . . . testimony might have produced a different result . . . . [P]etitioner's burden is to establish a reasonable probability of a different result.'")(quoting *Strickler v. Greene*, 527 U.S. 263, 291 (1999)).

Even if some of their speculation about injuries was true, it would not be exculpatory in Appellants' attempted murder cases when every bit of evidence presented at trial established

Appellants followed Lopez from the club and attacked him with box cutters, then attacked Solis when he intervened to try to render aid to Lopez. Neither Appellant testified in his own defense nor offered any other evidence that could have supported a conclusion they acted in self-defense during the incident, therefore evidence of injuries they suffered during the attack would have been inconsequential at trial. Appellants failed to demonstrate a *Brady* or other due process violation occurred and as a result, the trial court properly denied their motions to dismiss.

Additionally, Appellants argument regarding the alleged loss or destruction of the body-worn camera evidence did not warrant the extreme remedy of the dismissal of the charges against Appellants and would have nonetheless been inappropriate because: (1) the arguments presented during the motion hearing established the State did not engage in any bad faith in Appellants' cases (a point conceded by Appellants); (2) despite their conclusory assertions to the contrary, there was never a showing the evidence possessed apparent exculpatory value; and (3) evidence of comparable value was available by other means, such as the mugshots from their arrest, testimony of witnesses to the incident, or testimony of the arresting officers. *See State v. Mabe*, 306 S.C. 355, 358-359, 412 S.E.2d 386, 388 (1991) (explaining a defendant must show either the State destroyed the evidence in bad faith *or* the State destroyed evidence possessing an exculpatory value apparent before the evidence was destroyed *and* no other evidence of comparable value can be obtained by other means in order to warrant the dismissal of a case based on the loss or destruction of evidence); *see also Clark v. State*, 315 S.C. 385, 388, 434 S.E.2d 266, 268 (1993) ("[E]xculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different."); *State v. Cheeseboro*, 346 S.C. 526, 538, 552 S.E.2d 300, 306 (2001) ("The State does not have an absolute duty to preserve potentially useful evidence that

might exonerate a defendant."); *see generally Jean v. Collins*, 221 F.3d 656, 663 (4th Cir. 2000) (instructing bad faith in the context of the loss or destruction of evidence "requires that the officer have intentionally withheld the evidence for the purpose of depriving the plaintiff of the use of that evidence during his criminal trial"); *cf. State v. Reaves*, 414 S.C. 118, 128, 777 S.E.2d 213, 218 (2015) ("[A]lthough we acknowledge there are deeply troubling aspects of the investigation in this case, the errors made by the police do not indicate bad faith as is required to dismiss an indictment under the federal constitutional test."); *State v. Moses*, 390 S.C. 502, 519, 702 S.E.2d 395, 404 (Ct. App. 2010) ("The defense asserts the tape 'would most likely' have allowed it to identify witnesses who *may reasonably* have presented favorable evidence or evidence which could have lead the defense to impeachment evidence. Standing alone, this assertion is insufficient."); *State v. Breeze*, 379 S.C. 538, 546, 665 S.E.2d 247, 251 (Ct. App. 2008) ("The foregoing demonstrates the State's actions were not in bad faith but rather an inadvertent mistake."); *State v. Hutton*, 358 S.C. 622, 632, 595 S.E.2d 876, 882 (Ct. App. 2004) ("Nor can we find appellant could not obtain other evidence of comparable value by other means. The trial court allowed trial counsel to thoroughly cross-examine Bellinger about the first statement he gave and its contents.").

Finally, the State submits the contention that the information is material is belied by the evidence against Appellants in this case, which was overwhelming. When considering the speculative undisclosed evidence in totality, there is neither a reasonable probability its introduction would have resulted in a different outcome nor a reasonable probability its suppression undermined confidence in the verdict. For this reason, the information is not material under *Brady*. *See Clark v. State*, 315 S.C. 385, 388, 434 S.E.2d 266, 268 (1993) ("Impeachment or exculpatory evidence is material only if there is a reasonable probability that,

had the evidence been disclosed to the defense, the result of the proceeding would have been different."). Because the evidence is not material, any alleged suppression of this evidence cannot be a *Brady* violation. The trial court correctly declined to dismiss Appellants' charges. Its ruling was not based on an error of law and it was grounded in factual conclusions with evidentiary support. For all of these reasons, Appellants' convictions should be affirmed.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the convictions and sentences of the lower court as to both Appellants be affirmed.

Respectfully submitted,

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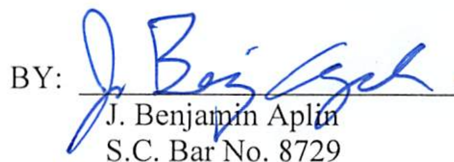
BY: 
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Columbia, South Carolina
September 10, 2024

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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
G.D. Morgan, Jr., Circuit Court Judge

Appellate Case Nos. 2023-000182 and 2023-001149

The State, ...Respondent,

v.

Luis Armando Alvarez,...Appellant.

AND

The State, ...Respondent,

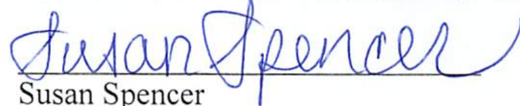
v.

Juan Carlos Alvarez, ...Appellant.

PROOF OF SERVICE

I, Susan Spencer, Legal Assistant, hereby certify that I have served the *Final Brief of Respondent*, dated September 10, 2024, on Appellant by sending an electronic copy via email to Beattie B. Ashmore and Robert A. Watson, counsel of record for Appellants, at the address listed for counsel in AIS.

I further certified that all parties required by Rule to be served have been served. This 10th day of September, 2024.



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Sent:	Tuesday, September 10, 2024 3:28 PM
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Subject:	The State v. Luis Armando Alvarez (2023-000182); The State v. Juan Carlos Alvarez (2023-001149)
Attachments:	ALVAREZ Luis Juan - Final Brief of Respondent.pdf

Good Afternoon Mr. Ashmore and Mr. Watson,

Attached please find the Final Brief of Respondent in The State v. Luis Armando Alvarez (2023-000182); The State v. Juan Carlos Alvarez (2023-001149). This Brief will be filed today with the South Carolina Court of Appeals via the AIS OneDrive System.

If you will, please confirm receipt of this email.

Thank you,

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