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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Horry County

Honorable R. Ferrell Cothran, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

YUNIQUE DEMESA WEATHERS,

APPELLANT

APPELLATE CASE NO. 2023-002002

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ANDERS BRIEF OF APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

Whether the court erred by refusing to direct a verdict on the charge of murder where the state failed to present any direct or substantial circumstantial evidence of malice aforethought, an essential element of the crime of murder?

## STATEMENT OF THE CASE

Appellant was indicted at the September 7, 2023 term of the Horry County grand jury for the offenses of murder and possession of a weapon during the commission of a violent crime. R. 300-303. Her case was called to trial on December 19, 2023, before the Honorable R. Ferrell Cothran and a jury. Joshua Holford and Elizabeth Farmer were the assistant solicitors. Justin M. Kata represented appellant. R. 57.

On December 20, 2023, the jury found appellant guilty on both counts. R. 286, ll. 18-24. Judge Cothran sentenced appellant to life imprisonment for murder and five years concurrent for possession of a weapon during the commission of a violent crime. R. 298, ll. 2-5.

This appeal follows.

## STANDARD OF REVIEW

“A case should be submitted to the jury when the evidence is circumstantial ‘if there is any substantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced.’” State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011) (quoting State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)). “Evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt.” Id. “Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error.” Id. at 139, 708 S.E.2d at 776-777.

“On appeal of the denial of a directed verdict of acquittal, this Court must look at the evidence in the light most favorable to the state.” Id. at 139, 708 S.E.2d at 777; see also State v. Hepburn, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013). If the state failed to present any direct evidence or any substantial circumstantial evidence reasonably tending to prove guilt of the accused, the appellate court must reverse the lower court’s denial of the directed verdict motion. Hepburn, 406 S.C. at 429, 753 S.E.2d at 409.

## ARGUMENT

The court erred by refusing to direct a verdict on the charge of murder where the state failed to present any direct or substantial circumstantial evidence of malice aforethought, an essential element of the crime of murder.

### **Relevant facts**

On January 23, 2022, Horry County police officer Paul Hamm was on patrol. R. 68, ll. 3-24. Hamm first encountered appellant at the Minuteman gas station off Highway 9 in Horry County. Hamm remembered that he was responding to another call across the street from the Minuteman when he saw “the victim’s car in the middle of the road with a little dog running around it. My—I thought someone maybe had gotten sick and maybe had opened the door and was throwing up or something and the little dog jumped out and they were trying to get the dog.” When Hamm went to investigate, he found out that appellant and her girlfriend, the victim, had been arguing “about a song and phone.” The victim’s red car was stopped in the road. R. 81, l. 22 – 83, l. 14.

Hamm did not consider the disagreement between appellant and the victim a “heated” situation. He remembered that they left the Minuteman separately after he talked to both about their argument. The victim drove away, and appellant walked away on foot. R. 82, l. 21 – 84, l. 5.

Hamm testified that about an hour later he saw the victim’s car parked near an open field on the side of the highway while he was responding to a “shots fired call.” R. 72, l. 3 – 73, l. 10. Hamm determined that “no one [was] actually in the car, and I circled around my car and directed my attention to the field where they were pointing.” Hamm then “heard a gunshot.” R, 73, ll. 4-18.

Hamm remembered that he walked into the field, and he heard another gunshot so he “drew my weapon. I walked across the field as best I could and at that point in time, I realized who I saw [the appellant] and I yelled her name and told her to drop the gun.” R. 74, ll. 2-5. Hamm testified that appellant dropped the gun, and he saw the victim lying face down near a large irrigation ditch. Hamm’s body-worn camera footage of the scene in the field was introduced into evidence as State’s Exhibit 6. It is before this Court for viewing.

After Hamm checked on the victim, he called for EMS to assist. He arrested appellant “and placed her in the back seat of my patrol car.” R. 74, l. 11 – 77, l. 19.

On cross-examination, Hamm testified that when he was investigated the fight at the Minuteman between appellant and the victim, he learned that appellant was in the military. He identified the shirt she had on at that time as having the neck of that shirt ripped. R. 86, l. 5 – 90, l. 22.

After Hamm talked to appellant and the victim, he remembered the victim “Ms. Fisher drove off on Highway 9 towards North Carolina” where the victim and appellant lived together. R. 90, l. 19 – 91, l. 13. Appellant left the Minuteman “on foot” after the victim drove away. R. 91, ll. 2-13. Hamm responded to the incident in a nearby field off Highway 9 between appellant and the victim about an hour later. R. 92, ll. 7-15.

Kenneth Baker was from Tabor City, North Carolina and he was driving through Horry County on January 23, 2022. He looked over into a field next to Highway 9, and he saw what he thought was a man and a woman having an altercation. “One of the people had a gun and the other one was on the ground.” The person standing up was “waving a gun” and he heard two gunshots. He recorded the incident on his cellphone. The cellphone footage was introduced as State’s Exhibit 7 which is before this Court for viewing. R. 95, l. 12 – 98, l. 7. On cross-

examination, Baker admitted he did not see any interaction between appellant and the victim before he witnessed the shooting. R. 100, ll. 5-13.

Anthony Anderson was the pastor at the “Father’s Cup Overflow Ministries.” He was driving around Highway 9 on January 23, 2022, when he saw what appeared to be a woman in a field. A woman was “in distress” along the side of the road. He said he later found out this woman was the victim in this case. R. 102, l. 5 – 104, l. 10.

Anderson called 911 because he thought someone had gotten hit. “They got hit and they were in a ditch, and they didn’t make it.” R. 104, l. 22 – 105, l. 9. Anderson went walking into the field because he thought someone may be hurt. As to witnessing an altercation between appellant and the victim, Anderson offered: “[T]hey weren’t throwing punches or anything, but there was a disagreement. And the victim was kind of crying and distraught, the eventual victim. And I said, look, you know, can we kind of handle this or do I need to call the police?” He did not see a gun at that point. R. 106, l. 24 – 108, l. 73

After Anderson called 911, he saw that appellant had pulled out a gun. He told the 911 operator: “Hey, look, there’s a gun involved.” R. 108, ll. 8-16.

Anderson then identified State’s Exhibit 64, which is before this Court for viewing, where Anderson was heard saying, “don’t shoot at her again.” R. 109, l. 3 – 110, l. 5. He also identified Officer Hamm on the video yelling for appellant to put the gun down. R. 110, l. 6 – 111, l. 17. Anderson said he did not see the victim with a knife or a gun. R. 111, ll. 9-17.

On cross-examination, Anderson said the victim told him: “You need to call the police” before she was shot. Anderson described the situation before the shooting between appellant and

the victim as “a very tense situation” which Anderson understood started about [house] keys.<sup>1</sup>  
R. 114, l. 7 – 116, l. 21.

Horry County police officer Matthew Stephenson responded to the scene of the shooting in the field on January 23, 2022. R. 120, ll. 5-14. He remembered seeing the victim lying face down on the ground near a ditch. She had bullet wounds to her thighs, and Stephenson thought she was also shot in the face. R. 122, ll. 5-17.

Stephenson saw shell casings, earbuds, and some money laying in the field near the victim’s body as well. R. 122, l. 16 – 123, l. 20. Stephenson collected the appellant’s gun and cellphones from the field. He obtained a search warrant during his investigation. R. 128, l. 14 – 24, l. 2. “All the rounds were expended from the handgun. So it appeared empty.” R. 129, l. 17 – 130, l. 13.

The pathologist, Dr. Angelina Phillips, conducted the autopsy on January 28, 2022. R. 139, l. 17 – 142, l. 17. Dr. Phillips said the victim was twenty-two-years-old, she was five-foot-two, and she weighed 144 pounds. R. 142, l. 23 – 143, l. 19.

Dr. Phillips identified gunshot wounds to the victim’s face, to the right side of her head, two gunshot wounds to her thigh, one to her left knee, and another to her right leg. Dr. Phillips opined this was consistent with the shooter standing over the victim. R. 143, l. 15 – 146, l. 8. “The cause of death is gunshot wounds to the head, left thigh, left knee, and right leg, as listed in my report.” R. 149, ll. 3-5.

SLED firearms analyst Chad Smith testified that all of the shell casings found in the field were fired by the gun taken from appellant upon her arrest. The bullet from the autopsy was also traced to that same gun. R. 166, l. 15 – 170, l. 15.

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<sup>1</sup> When the victim left appellant at the Minuteman gas station and started driving home to North Carolina, she took appellant’s key to the house they lived in together.

The state also introduced evidence that appellant's cellphone had a text message from January 23, 2022, at 1:25 p.m. where appellant wrote to someone: "Don't come. I'm going to jail. I killed her." R. 180, l. 8 – 181, l. 5.

On cross-examination, Detective Alan Skellett acknowledged a phone call from an eyewitness, Shawn Gore, to the police after the shooting. Gore told law enforcement that he saw "two subjects screaming at each other" in the field before the shooting. Another witness, Barbara Augusta, also observed the altercation in the field that caused her to call 911.<sup>2</sup> R. 188, l. 7 – 190, l. 17. Skellett did acknowledge on cross-examination that appellant's shirt she was wearing at the time of the altercation with the victim in the field was torn or ripped. R. 192, l. 13 – 193, l. 7. He also remembered seeing "a slight bit of blood" on appellant's lip after she was arrested. R. 193, ll. 8-16.

### **Directed verdict motion**

Defense counsel moved for a directed verdict after the state rested with Detective Skellett's testimony. Defense counsel cited the lack of direct or circumstantial evidence of the element of malice that was needed for the murder charge.

The judge denied the motion for directed verdict. R. 194, ll. 14-18. Defense counsel renewed that motion for directed verdict at the conclusion of the defense case, which was again denied. R. 254, l. 22 – 256, l. 2.

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<sup>2</sup> On cross-examination of Detective Skellett, defense counsel asked him if he was aware that appellant had taken out a restraining order -- seemingly against the victim. The judge sustained the state's non-specific objection, but the answer to the question was not proffered, making this a post-conviction relief issue if that restraining order was against the victim. R. 191, ll. 4-25.

### **Appellant takes the stand**

Appellant testified that she was born in Columbia, South Carolina and that she grew up in Decatur, Georgia. She was in the military stationed at Ft. Bragg at the time of this incident. She met the victim on a “dating app” and they subsequently moved in together in North Carolina. They went on a weekend vacation to Myrtle Beach together before they had an argument in the victim’s car, which appellant was driving, because the victim did not like the music appellant was playing. The decedent threw the “aux cord” out of the window. Appellant stopped the car at a stoplight, and the decedent “snatches the keys out, and runs into the gas station [the Minuteman] that was nearest to us. Officer Hamm arrived “about a minute and a half” later. R/ 212, l. 3 – 218, l. 5.

After Officer Hamm talked to appellant and the victim, the victim left in her car for North Carolina. Appellant called a friend for a ride and started walking on the side of Highway 9 where her friend would stop and get her. Appellant related that in the meantime the decedent came driving back towards the beach in her car and tried to coax appellant into getting into the car. Appellant refused to get in the car, and the decedent drove away. However, the decedent would continue to circle around and make U-turns and return to urge appellant to get into the car again. Appellant said the decedent was laughing and “mocking me” during these exchanges. R. 228, l. 3 – 229, l. 24.

Appellant said the decedent turned around and came back five times. Appellant testified that on the last attempt to get her into the car, the decedent told appellant if she did not get into the car that she was going to get the gun out of her car and kill herself. This concerned appellant. When appellant reached into the car, “she [the decedent] headbutts me in my mouth and got out.” Appellant was able to grab her house key when this occurred. Appellant described for the jury

how the decedent headbutted her, grabbed her by the hair, and continued to hit her. The decedent followed appellant into the field as she tried to get away from her. Appellant remembered Pastor Anderson intervening, and she attempted to run from the decedent. R. 234, l. 4 – 235, l. 24.

The decedent would catch up to appellant and hit her again. Appellant remembered while walking towards the drainage ditch, that she knew she was “cornered” because she could not jump over the huge ditch. During this beating, appellant pulled out her gun and shot the decedent in attempt to stop her. Appellant “blacked out” after this and did not remember continuing to shoot the decedent. R. 234, l. 4 – 238, l. 5. Appellant said the last thing she remembered was the demands from the police officer which she followed. R. 238, ll. 2-5.

On cross-examination, appellant testified she did not remember sending a text to her friend saying, “don’t come, I’m going to jail, I killed her.” R. 247, ll. 17-21. Appellant testified that during the beating she suffered at the hands of the decedent, that she “snapped.” R. 252, l. 10 – 253, l. 11. Appellant identified the shirt she was wearing that day on redirect examination, and she said the decedent tore that shirt during her attack, and appellant admitted she was very angry with the decedent at the time of the shooting. R. 254, ll. 1-13. At the conclusion of appellant’s testimony, the defense rested. R. 254, ll. 21-22.

The judge charged the jury on the law of murder and voluntary manslaughter. R. 278, l. 7 – 280, l. 20.

## **Discussion**

The lower court should not refuse to grant the motion for a directed verdict where the evidence, as here, merely raises a suspicion that the accused is guilty. See State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000). In Mitchell, a burglary case, the victim testified that Mitchell had

been over to his house on a couple of occasions, and that Mitchell had also attended a social gathering at the victim's home for about forty-five minutes to one hour. A police officer investigating the burglary found glass on the floor, and there was a screen from which the officer was able to get an identifiable fingerprint. That fingerprint matched Mitchell. The Supreme Court held that the state had failed to produce substantial circumstantial evidence reasonably tending to prove Mitchell was guilty of burglary and that a directed verdict should have been issued.

In State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000), the Supreme Court also held the defendant was entitled to a directed verdict in that murder case. There was evidence a vehicle was seen on the night of the murder in the victim's apartment complex that was very similar to the car in which Martin and his co-defendant were traveling that night. Further, when Martin and his co-defendant were late picking up Martin's girlfriend the defendant told her "some shit happened," and the co-defendant added, "somebody may have died tonight." State v. Martin, 340 S.C. at 600, 533 S.E.2d at 601.

Evidence tied to the murder scene in Martin was also found in trash cans surrounding the bar where Martin's girlfriend worked. This Court held that all of this evidence, while certainly raising a suspicion of Martin's guilt, was insufficient to withstand a directed verdict motion.

Further, in State v. Schrock, 288 S.C. 129, 322 S.E.2d 450 (1984), the Supreme Court held that evidence the defendant was in the area of the murder scene, and that footprints at the scene were similar to his and were found in the area where the defendant was walking were insufficient to take the case to the jury.

In State v. Schrock, there was also evidence that Marlboro cigarette butts were found at the murder scene, and the defendant admitted to the police that he smoked Marlboro cigarettes. Further, tests performed on an oil can at the scene did not supply any conclusive connection

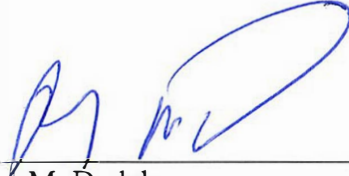
between the defendant and the crime scene. The Supreme Court held the defendant was entitled to a directed verdict under these circumstances.

The evidence in this case showed that the appellant shot the decedent while she was being beaten by the decedent after being insulted and mocked by the decedent. Appellant not surprising was in a rage as a result of this mistreatment, having her hair pulled, and being beaten. The evidence in this case provided an almost classic case of voluntary manslaughter.

Voluntary manslaughter is the unlawful killing of a human being in a heat of passion upon a sufficient legal provocation. See State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 301, 303 (2001) *citing* State v. Cole, 338 S.C. 97, 101-02, 525 S.E.2d 511, 513 (2000). Since the state failed to provide any direct or substantial circumstantial evidence appellant killed the decedent with malice aforethought, an essential element of murder, the judge erred by refusing to direct a verdict.

**CONCLUSION**

By reason of the foregoing argument, appellant's convictions should be reversed, and this case remanded to the Horry County Court of General Sessions for a new trial.



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Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of December, 2024.

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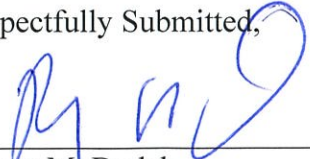
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Yunique Demesa Weathers states:

1. He is Chief Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge R. Ferrell Cothran, which was held on December 18-20, 2023, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

Wherefore, he asks the Court to relieve him as counsel for Yunique Demesa Weathers.

Respectfully Submitted,

  
Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of December, 2024.

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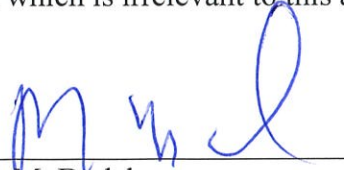
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**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s):
- (2) Two Entire trial transcripts dated December 18 and December 19th and 20, 2023.
- (3) State's Exhibit 6 (USB)
- (4) State's Exhibit 7 (USB)
- (5) State's Exhibit 64 (USB)

I certify that this designation contains no matter which is irrelevant to this appeal.



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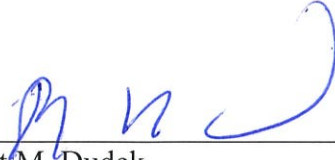
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**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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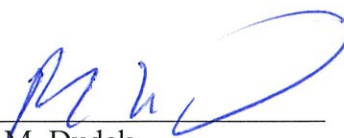
YUNIQUE DEMESA WEATHERS,

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APPELLATE CASE NO. 2023-002002

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Yunique Demesa Weathers, #392891, at Graham Correctional Institution, 4450 Broad River Road, Columbia, SC 29210, this 4th day of December, 2024.

  
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