RECEIVED
May 30 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Hon. Daniel Coble, Circuit Court Judge

Appellate Case No. 2024-000890
Lower Case No. 2022GS4001884

State of South Carolina . . . . . Respondent,

vs

Troy C. Stevenson, Jr., ... Appellant

INITIAL BRIEF OF APPELLANT

C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010
rauchwise@gmail.com
S.C. Bar No. 6188

Attorney for Appellant

Index

Page:

Table of Authorities

Cases: **Page:**

Rules:

Statement of Issues on Appeal

Question I: Did the trial court err in failing to suppress the testimony as to the alleged defective taillight of the black Honda Accord belonging to Ashley Carter when the disclosure was made at 1:17 P.M. through an email the day the trial started?

Question II: Did the trial judge err in failing to grant a directed verdict motion when the state failed to establish substantial circumstantial evidence to prove that Troy Stevenson was the person who fired the weapon or that he aided and abetted in firing a weapon?

Question III: Did the trial court err in charging the jury as to the law of the hand of one is the hand of all when the state introduced no evidence of any planning between two people and only speculative evidence, at best, that another person was involved?

Statement of the Case

Procedural History

Troy Christopher Stevenson, Jr. was arrested on May 12, 2021 for allegedly shooting into the residence of Charlie Jackson and killing him. He was charged with murder and the possession of a firearm while engaged in a violent crime. The shooting occurred on April 6, 2021. He was indicted on April 14, 2022, for those charges. Mr. Stevenson was tried before the Circuit Judge Daniel Coble and a jury from May14 to May 23, 2024, in Richland County. He was convicted of murder and acquitted on the charge of the possession of a firearm while engaged in a violent crime.

Mr. Stevenson filed his Notice of Appeal on June 3, 2024.

Statement of the Facts

In the early morning hours of April 6, 2021, two houses in Richland County were shot with numerous gun shots. The first house, located at 2849 Lucille Drive, was the residence of the mother of Troy Stevenson. The shooting occurred about 2:11 A.M. No one was injured in this shooting incident. The second house was at 209 Devoe Drive, was the residence of the deceased, Charlie Jackson, and his daughter, Tamira Chasicia Jackson. This shooting occurred about 2:45 A.M.

Through the investigation, Troy Stevenson was developed as a suspect in part because the house of his mother had been shot. During the investigation, the investigator obtained records from various cell phone companies and different social media outlets. The investigation revealed that Dai'Juan Richardson was the shooter of the house on Lucille Drive. Early that evening he had been involved in a fight at the Lucille Drive house. ROA at 78, ll 19-20. While investigating

the shooting at Devoe Drive, a firearm was found belonging to Mr. Richardson. The shell casing and bullets from Lucille Drive matched the firearm found at Devoe Drive. ROA 762, ll 13-21. No shell casings were found at the Devoe Drive site. No weapon allegedly involved in the Devoe Drive shooting was ever recovered. ROA at 391, ll 2-16.

In searching the records of Mr. Stevenson, the investigators found a text message with the address of 209 Devoe Drive. ROA at 531, ll 15-19. Further, the cell tower records for Mr. Stevenson, placed him in the area of 209 Devoe Drive at the time of the shooting. Scott McDonald, the cell tower expert testified, "I can put it -- the arc from the cell site encompasses Devoe Drive. I cannot put that particular device at 209 Devoe Drive." ROA at 498, ll 8-9.

The video from door cameras near 209 Devoe Drive show a dark colored four door car going through the area at about the time of the shooting. State's Exhibit 48. Part of the video appears to show an automobile with the right rear break light not working. ROA at 411, ll 1-3.

The time of the shooting was established through the Shotspotter system. ROA at 532, l 6. The testimony established that Ashley Carter, the girlfriend of Mr. Stevenson owned a black Honda Accord which Mr. Stevenson used at times. ROA at 323, ll 5-9. The Honda Accord was seized by the investigators on May 12, 2021. ROA at 323, ll 17-20. At the time of the trial, the automobile had not been returned to Ms. Carter. In examining the automobile, the investigators found no trace of gun shot residue. Jennifer Nates, the gunshot residue expert, stated, "So if it was from within that vehicle, yes, I would expect to find GSR deposited in that vehicle." ROA at 630, ll 8-9. As no shell casings were found at 209 Devoe Drive, the theory was the firing came from inside the automobile. ROA at 392, ll 2-5. The defense presented expert testimony that the bullets found at 209 Devoe Drive would most likely have been fired from one of two types of

rifles. ROA at 754, l 17 to 755, l 1. The State did not refute this testimony.

Aside from the cell tower information which placed Mr. Stevenson's phone in the vicinity of 209 Devoe Drive, no other forensic evidence placed Mr. Stevenson at the scene.

Standard of Review

As to Question I involving the suppression of the evidence or declaring a mistrial because of a late disclosure, the standard of review is abuse of discretion. "The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion."

State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)

As to Question II involving the failure to direct a verdict, the standard of review is de novo as the sufficiency of the facts to convict is a question of law. "[T]his Court reviews questions of law de novo." *State v. Adams*, 409 S.C. 641, 647, 763 S.E.2d 341, 344 (2014)

As to Question III on charging the hand of one is the hand of all, the standard of review is abuse of discretion. "An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court committed an abuse of discretion." *Cole v. Raut*, 378 S.C. 398, 404, 663 S.E.2d 30, 33 (2008). In a criminal case, the Court should be aware that, "The standard for review of an ambiguous jury instruction is whether there is a reasonable likelihood that the jury applied the challenged instruction in a way that violates the Constitution." *State v. Aleksey*, 343 S.C. 20, 27, 538 S.E.2d 248, 251 (2000)

Argument

Question I:

Did the trial court err in failing to suppress the testimony as to the alleged defective taillight of the black Honda Accord belonging to Ashley Carter when the disclosure was made at 1:17 P.M. through an email the day the trial started?

On May 13, 2024 a pretrial hearing was conducted to resolve several issues including the delayed discovery disclosure. Motion filed May 13, 2024. This Motion was filed notwithstanding an order from Judge Jocelyn Newman from 2021 ordering discovery to be given to defense counsel. Order Judge Newman.

The discussion on the motion for sanctions as to discovery violations was contentious. ROA at 10, ll 5-9. The trial judge, in denying the motion to dismiss for discovery violations said, as to his basis for suppressing any late discovery, "[I]f there is a reckless disregard, gross negligence by the State in keeping evidence away from the defense, that's what I am looking for, something drastic of that nature." ROA at 9, ll 22-25 In denying the Motion as to discovery violations the trial judge said, "However, that does not close the door to suppressing any particular evidence that was not turned over on a case-by-case basis, and at the end of the trial does not close the door to a potential spoilation charge to the jury depending on how this trial plays out." ROA at 10, ll 10-14[1]

The issue in this question first came to the surface when on the first full day of trial, defense counsel received an email from the assistant solicitor informing her that the State

---

[1] The comment about a spoilation instruction for the late disclosure of evidence is confusing.

intended to introduce evidence that the right rear brake light was out on automobile belonging to Ashley Carter, the girlfriend of Mr. Stevenson. This discussion occurred at 2:48 on the afternoon after the pre-trial hearing concerning the discovery violations. ROA at 190 l 17 to 191, l 15. At the hearing the previous day, the assistant solicitor advised the Court he had on April 2, 2024, sent defense counsel an email advising her, "We went to the impound lot to look at Ashley Carter's black Honda last week." ROA, 17, ll 14-16 (May 13 hearing). Nothing in the email suggested the State had learned anything of significance as to the car. A defective right rear brake light was not mentioned. At no time during the May 13, 2024 hearing on discovery violations was any defect in the automobile of Ms. Carter mentioned.

During the discussion on May 14, 2024, the assistant solicitor stated, "In watching the video, it appears to me the brake light is out." ROA at 193, ll 24-25. As a result, the defense counsel was given the opportunity to view the automobile after court adjourned for the day. At no time did the assistant solicitor advise the court when he observed the automobile or when he learned the brake light was out on the automobile of Ms. Carter. During the discussion, reference is made to an April 2, 2024, email from the assistant solicitor in which it is stated he viewed the automobile of Ms. Carter on that day. In response to that email, the defense counsel responded, "I would have liked to look at the evidence when you did since I have previously asked to see all the evidence. Please set up a viewing for me and my staff this week or provide me the number of the person I need to call to set up a viewing the evidence - - all the evidence that I previously requested to see, I have available time Thursday and Friday." ROA at 191, ll 5-11. The trial judge then offered to facilitate a time for defense counsel to see the automobile if the parties were not able to agree, ROA at194, ll 8-13.

The next day, the defense attorney requested a hearing as to several issues including the one involving the alleged defective automobile. ROA at 263, l 11. Defense counsel started by marking as Court Exhibit 4, the email received by defense counsel that day as to the defective brake light. Defense counsel asked for the remedy to be dismissal of the charges She argued, "[W]e would A, again reaffirm dismissal based on *Brady* violation. Two, and under *Riddle* it falls under the exculpatory - - or, inculpatory." ROA at 263, ll 23-25.[2]

In moving to exclude any testimony as to any alleged defect as to the break light trial counsel noted, "That car's been sitting there for three years in the custody and control of Richland County, and yesterday was the first time I learned about that." ROA at 264, ll 8-11. While the automobile had been in impound for a few days over three years, the State never offered any testimony or documentation as to the condition of the automobile at the time it was seized. Apparently the automobile has also been left out in the elements. Whether the taillights or brake lights were working at the time of the seizure is not known.

In response, the assistant solicitor argued, "Upon retrospect yesterday I decided maybe it's more of a Rule 5 issue, not a *Riddle* issue, and so having pondered that out of an abundance of caution I sent defense that information that we had gone out there - -and made the determination that that brake light was out." ROA at 265, ll 2-7. The assistant solicitor did not state when he viewed the car and determined the brake light was out.

In ruling against the motion to suppress the evidence or dismiss the charges, the trial judge stated, "There was no high level of intent or reckless disregard, prosecutorial misconduct

---

[2] The reference to "*Riddle*" is apparently a reference to *Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006)

as to your motion to suppress, and I'm denying that based on the curative issue of going to the impound last night." ROA at 266, ll 6-9. Subsequently, defense counsel asked the court to declare a mistrial, "based on all of these issues." ROA at 268, l 1.

In so ruling, the trial court erred as a matter of law and erred in reaching its factual conclusions. While the exact date the assistant solicitor first learned the automobile belonging to Ms. Carter had a defective taillight or brake light is not known, the assumption seems reasonable that this information was not learned from the afternoon of May 13, 2024 until 1:17 P.M. on May 14, 2024. The reasonable assumption is that the fact about the defective light was learned when the automobile was visited on April 2, 2024, the date the email states the assistant solicitor visited the impound lot.

Rule 5 of the South Carolina Rules of Criminal Procedure provides:

> Upon request of a defendant the prosecution shall permit the defendant to inspect and copy any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at the trial.

The testing of the automobile belonging to Ms. Carter would qualify as "scientific tests or reports" that should have been disclosed to defense counsel. The assistant solicitor appears to have acknowledge this when he stated, "out of an abundance of caution I sent defense that information . . . ." ROA at 265, ll 3-4. Two unanswered questions exist. Why was the information not sent on April 2, 2024 in the email sent shortly after this test result was learned? Why was it not mentioned on May 13, 2024 when a hearing was held as to the discovery violations? The only conclusion that can logically be reached is that the failure to disclose the

relevant information was either intentional or grossly negligent. When a hearing is being held on May13 as to the failure of the State to promptly turn over discovery, to claim such failure to turn over the report of the April 2 visit was inadvertent simply stretches credibility too far.

Many states have addressed and wrestled with the remedy for the failure of the State to turn over discovery. *See, e.g. State v. Heath*, 696 S.W.3d 677 (Tex. Crim. App.); *State v. Lyons*, 211 N.E.3d 500 (Ind. 2023); *State v. Zuroweste*, 570 S.W.3d 51 (Mo. 2019); *State v. Aicklen*, 767 So. 2d 116 (La. App. 4 Cir. 2000); *Harris v. State,* 195 P.3d 161(Alaska Ct. App. 2008); *Box v. State*, 437 So. 2d 19 (Miss. 1983); *Richardson v. State*, 246 So. 2d 771 (Fla. 1971); *People v. Rubino,* 305 Ill. App. 3d 85, 711 N.E.2d 445 (1999). The courts have applied remedies from dismissal of the case, excluding the evidence or granting a continuance.

The first issue to be decided by this Court is whether Mr. Stevenson was prejudiced by the late disclosure. Prejudice in this context is different from the prejudice analysis when improper evidence is presented to the court. In *Richardson* , the Florida Supreme Court reversed the conviction because of the failure of the state to disclose the name of a witness, even though the witness did not testify at trial. In the case, the record did not even reflect if Dick Davis, the witness disclosed at trial, would have helped the defense. In reversing the case, the court said the trial court needed to determine, "what effect, if any, did it have upon the ability of the defendant to properly prepare for trial." *Id.* at 775. Note the prejudice is in the ability of the defendant to prepare for trial and not any actual prejudice at trial. For this reason, the during trial opportunity to see the automobile does not eliminate the prejudice to Mr. Stevenson in preparing for trial.

The reason for this is simple. The issue at trial was whether the automobile shown on the videos belonged to Ashley Carter. No license plate was ever shown. In the video the automobile

is simply an ordinary four door dark colored four door that may be a Honda. When the state is able to take a unique feature of the automobile in the video and match it up to a unique feature in the automobile they had in the impound, then the defense strategy changes. This is a fact that must be accounted for during the trial. This late disclosure had an impact on the ability of defense counsel to prepare for trial. In *Richardson*, the court acknowledged "Dick Davis" was not called by the state and they further acknowledged, "[W]e should not speculate as to whether there was in fact such a witness as 'Dick Davis' . . . ." *Id.* at 776. In this case, if given the opportunity and time, what would further investigation of the defective automobile show?

In deciding this issue, this Court, as the court in *Richardson* should not speculate if what could be learned may be helpful or may not be helpful. The point is, the late disclosure had an impact on the ability of defense counsel to prepare for trial. The late disclosure impacted trial strategy.

The record in this case does not establish whether the actions of the assistant solicitor in failing to disclose the information he learned about the automobile some six weeks before trial was wilful. The trial court did not make any inquiry as to when the assistant solicitor learned of the defective taillight or brake light nor why it was not promptly disclosed. A determination of willfulness is important to determine the proper sanction. "Trial courts maintain broad discretion to manage discovery and that includes sanctioning parties to enforce discovery rules and orders." *Lyons* at 505.

In *Lyons*, the court noted:

> For sanctions addressing a party's late disclosure of evidence, our cases have long recognized three governing principles: (1) we generally treat late disclosures the same whether the State or the defendant committed the discovery violation; (2)

> the two typical remedies are to continue the trial or to exclude the evidence; and (3) we exclude evidence only if (a) that is the sole remedy available to avoid substantial unfair prejudice, or (b) the discovery violation was intentional, flagrant, in bad faith, or otherwise reprehensible.
> *Id.* at 505-506

In *Harris,* Alaska Court of Appeals approved of the sanction of excluding the testimony of a defense witness because of the late disclosure of the required information as to the defense expert. The late disclosure was egregious. In holding the sanction was justified, the court said, "However, when a party fails to comply with a discovery obligation, the burden of proving non-willfulness is on the party who failed to comply." *Id.* at 174. The same rule should apply in this case. A discovery violation by the State occurred. The State had the burden below and has the burden on this appeal to show the violation was non-willful. No evidence in this record establishes the violation was non-willful.

While South Carolina does not have established case law as to the failure to comply with criminal discovery rules, there are many cases involving violation of civil discovery rules. As the protection of a defendant's liberty is as important as the protection of a defendant's purse, the civil rules should establish the bottom level of protection of a criminal defendant. In a civil case this Court has said, "The rights of discovery provided by the Rules give the trial lawyer the means to be prepared for trial. Where these rights are not accorded, prejudice must be presumed and, unless the party who has failed to submit to discovery can show a lack of prejudice, reversal is required." *Downey v. Dixon*, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987). In this case the assistant solicitor never attempted to show the defendant was not prejudiced.

In *Richardson v. Twenty-One Thousand and No/100 Dollars*, 430 S.C. 594, 856 S.E.2d 14 (2020), the plaintiff failed to respond to any of the discovery requests of the defendant. The

trial judge imposed no sanctions on the plaintiff and allowed the case to proceed. This Court held the trial judge should have simply continued the case to allow the defendant to receive the requested discovery. As this court noted, the continuance would allow "White to assess its strength and if necessary, reconsider his trial strategy." *Id.* at 601, 846 S.E.2d at 17. This Court in *Richardson* did not require the party who did not receive the discovery to show prejudice. This Court, citing *Downy*, simply held prejudice was presumed as the offending party did not prove the defendant was not prejudiced.

The same rules should apply in this case. No logical reason exists to give less protection to a defendant in a criminal case than is afforded a defendant in a civil case. In a criminal case there is more need to afford a defendant even greater protections. Mr. Stevenson is not in this case arguing for more protections than a civil defendant, just the same protections.

Our supreme court, citing *Wright v. Royse*, 43 Ill.App.2d 267, 193 N.E.2d 340 (1963) said:

> We hold that the exclusion of a witness whose name is not given in answer to an interrogatory calling for it is but one of the discretionary powers committed to a trial judge for the proper conduct of litigation. . . . We further hold that there is no mandatory rule requiring the trial court to exclude a witness whose name is not given, but that the trial court is under a duty, when the situation arises, to delay the trial for the purpose of ascertaining the type of witness involved and the content of his evidence, the nature of the failure or neglect or refusal to furnish the witness' name, and the degree of surprise to the other party, including prior knowledge of the name by said party.
> *Laney v. Hefley*, 262 S.C. 54, 59–60, 202 S.E.2d 12, 14 (1974)

In *Richardson*, this Court said, "The trial court abused its discretion by not delaying the trial to scrutinize the nature of the undisclosed discovery, the prejudice to White, and the need to stay the trial until discovery could finish. A court that does not use discretion—or recognize it

has discretion—when discretion exists commits an error of law." *Id.* at 601, 846 S.E.2d at 17 As the trial judge in this case did not delay the trial to give defense counsel a full opportunity to evaluate the late disclosure of the new trial court nor otherwise abide by the requirements of *Richardson*, he abused his discretion.

In *Richardson*, this Court reversed the judgment entered against the defendant and remanded the case to allow discovery to be completed before a new trial. In remanding the case, this Court said, "The use of a continuance as a remedy in similar discovery sanctions has long been endorsed." *Id.* at 601, 846 S.E.2d at 17. In this case the trial judge did not consider a mistrial as requested by defense counsel. This was error.

Due to the posture of this case, the effect of a reversal would be to have granted a continuance by the trial judge below. Mr. Stevenson believes the sanction should be to exclude the evidence in a new trial. If the assistant solicitor had disclosed the information on or shortly after April 2, 2024 when he learned it, the alleged defective brake or taillight would not have been an issue. Had the assistant solicitor disclosed the information at the May 13, 2024, hearing involving the discovery violations, defense counsel could have simply requested a continuance which should have been granted.

If this Court does not believe that the record is adequate to establish a finding of a willful violation of the discovery rules, then this Court should remand the matter to the trial court to conduct a hearing as to wilfulness. In reviewing the record as to the proper remedy, this Court should be guided by the principle that we will have less improper conduct if the improper conduct is punished.

Question II

Did the trial judge err in failing to grant a directed verdict motion when the state failed to establish substantial circumstantial evidence to prove that Troy Stevenson was the person who fired the weapon or that he aided and abetted in firing a weapon?

In this case, the State never established that Mr. Stevenson possessed a firearm of the type used in the shooting. No witness testified Mr. Stevenson was seen with such a weapon. No shell casings of any type were found in the automobile belonging to Ashley Carter. No bullets of any type were found in the possession of Mr. Stevenson. No gun shot residue was found in the automobile of Ashley Carter. The expert for the state could only testify the cell phone belonging to Mr. Stevenson was only in the area of 209 Devoe Drive, where the shooting occurred. Finally, with no proof as to the condition of automobile of Ashley Carter at the time it was seized, testimony of a defective brake light similar to the one on video is speculative at best when the automobile remained in the open for over three years.

This case should be controlled by *State v. Bostick,* 392 S.C. 134, 708 S.E.2d 774 (2011); *State v. Arnold,* 361 S.C. 386, 605 S.E.2d 529 (2004) and *State v. Hernandez,* 382 S.C. 620, 677 S.E.2d 603 (2009). In each of those cases the evidence shows the guilt of the defendant to be probable, but that was not sufficient to convict. The South Carolina Supreme Court has also said, "We have held that the mere fact that the circumstances are strongly suspicious and the *defendant's guilt probable* is not sufficient to sustain a conviction because the proof offered by the State must exclude every reasonable hypothesis except that of guilt and must satisfy the jury beyond a reasonable doubt. *State v. Hyder*, 242 S.C. 372, 379–80, 131 S.E.2d 96, 100–01 (1963)(emphasis added); *State v. Powell*, 202 S.C. 432, 25 S.E.2d 479, 481 (1943)("Suspicion,

however strong, does not suffice. Possible guilt, even probable, will not sustain a conviction of crime."). Against these standards, the proof in this case fails.

In *Arnold* there was strong evidence that Mr. Arnold was with the deceased at the time of or shortly before he was killed. The automobile which the deceased borrowed around 1 P.M. on the day he was killed was found in Tennessee, some 10 miles from the home of the father of Mr. Arnold. *Id.* at footnote 4. A fingerprint of Mr. Arnold was found on a coffee cup lid in the car. In addition, Mr. Arnold had met the deceased shortly before through a mutual friend. He was involved in a sexual relationship with the deceased. Even though the evidence made his being guilty probable, the South Carolina Supreme Court held the facts were not sufficient to convict as the State could not prove Mr. Arnold was ever at the scene of the crime.

Mr. Stevenson recognizes that the South Carolina Supreme Court has said, concerning *Arnold* and *Bostic*, "We recognize in this area of ever-evolving jurisprudence our inquiry is necessarily fact-intensive; therefore, the holdings in those cases are limited to their peculiar facts." *State v. Bennett,* 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016). What limiting them to their facts means was not given. In the opinion, Justice Hearn, in reversing this Court, stated, "In our view, this discussion clearly indicates the court of appeals weighed the evidence and reversed based on its conclusion that there was a plausible alternative theory inconsistent with Bennett's guilt. This is contrary to our jurisprudence and misapprehends the court's role making this determination." *Id.* at 236, 781 S.E.2d at 354. Under this standard of review no circumstantial case could ever be overturned as the reviewing court would be prohibited from looking objectively at all the evidence and concluding there is a reasonable explanation of innocence. What Justice Hearn appears to have failed to appreciate is once the facts of a case are viewed in

the light most favorable to the state, the inferences from those facts are equally available to the appellate court, the trial court and the jury. Looking at inferences from the facts is not infringing upon the providence of the jury. By stating the standard of review is "ever evolving" the Court has only confused the issue.

The Fifth Circuit has said, "However, if the evidence viewed in the light most favorable to the government supports an equal or nearly equal theory of guilt and of innocence, we must reverse the conviction because a reasonable jury, under these circumstances, necessarily entertains a reasonable doubt." *United States v. Rasco*, 123 F.3d 222, 228 (5th Cir. 1997). *See, also, People v. Rodriguez,* 63 A.D.2d 919, 920, 406 N.Y.S.2d 63 (1978)("The evidence in the present case is equally consistent with a conscious objective to cause serious physical injury or with a conscious objective to cause death. Such evidence thus equally consistent with the two intents may not form the basis for a finding against the defendant of the graver intent.") These cases stand for the position that a reviewing court does look for an alternative explanation.

The United States Supreme Court in *Jackson v. Virginia*, 443 U.S. 307 (1979) said, "But it could not seriously be argued that such a 'modicum' of evidence could by itself rationally support a conviction beyond a reasonable doubt." *Id.* at 320. If an appellate court, as stated by Justice Hearn, is prohibited from looking at an innocent explanation from the evidence, then the most absurd interpretation from the evidence of guilt would be sufficient to convict. This would obviously violate the prohibition of using a modicum of evidence to convict. The problem with any court in our state in reviewing a circumstantial evidence case is that our courts have never defined substantial circumstantial evidence.

The Fourth Circuit in *Goldsmith v. Witkowski*, 981 F.2d 697 (4th Cir. 1992) did not

exclude a reasonable theory of innocence when they reversed this conviction. Mr. Goldsmith was found at a table in a apartment with drugs on the table. The jury could, and obviously did, conclude he knew the drugs were there and the drugs belonged to him. The Fourth Circuit said this was not sufficient because the State of South Carolina had not eliminated the innocent explanation that the drugs did not belong to him. Under the standard of review suggested by Justice Hearn, this case would have been affirmed.

Properly understood, substantial circumstantial evidence has to mean, at the very least, that the theory for conviction is substantially more likely than the theory for acquittal. Only then should the circumstantial evidence case be submitted to the jury. Under these circumstances, a trial court and an appellate court do, to some extent, "weigh" the evidence. But if the standard of proof of beyond a reasonable doubt is to have any real meaning, then this type of weighing by judges, trial and appellate, must be done. After all, a pure circumstantial evidence case is the only type of case tried in our country where all the witnesses can be truthful, and an innocent person convicted.

The problem in this case is the jury used the accomplice jury charge to convict Mr. Stevenson. To properly evaluate this case, the proper standard of review should be was there substantial circumstantial evidence to prove Mr. Stevenson aided and abetted another person in shooting the house at 209 Devoe Drive? As this record is barren of any evidence of an agreement, the State has failed to prove Mr. Stevenson aided and abetted anyone. Based upon the jury verdict, the jury found Mr. Stevenson did not fire the murder weapon. To convict Mr. Stevenson, there has to be substantial circumstantial evidence that Mr. Stevenson planned with some unknown person to shoot the house. This evidence does not exist.

The South Carolina Supreme Court has held that probable guilt is not sufficient to convict. This Court is obligated to follow those holdings. The evidence in this case is only sufficient to find, at the most, probable guilt. This is not sufficient. The conviction should be reversed.

Question III

Did the trial court err in charging the jury as to the law of the hand of one is the hand of all when the state introduced no evidence of any planning between two people and only speculative evidence, at best, that another person was involved?

In the indictment in this case, Troy Stevenson is charged with murder. He is not alleged to have been participating with another individual. In the cross examination of Officer Adam Oxendine the following occurred:

> Q. (By: Ms. Zmroczek) [T]he State's --theory that Troy Stevenson and Troy Stevenson alone drove that black Honda while, in the driver's side, armed with one of these two weapons -- and by one of these two I'm referring to 90 and 91 -- shot up 209 Devoe Drive by himself in that vehicle? That has always been the State's theory; is that correct?
> A. (By: Mr. Oxendine) Yes, ma'am.
> ROA at 931, 6-13.

In discussing the jury charge, the assistant solicitor requested the hand of one is the hand of all charge. In making this request he stated:

> Your Honor, based on Ms. Setree's testimony I feel compelled to ask for it because now there's been -- she was not qualified as an expert but she testified to her opinion throughout, and her opinion was that there was a passenger in the car. That's where we are now, that there was a dog and a passenger. So we are compelled to ask for that at this point.
> ROA at 943, ll 14020.

Ms. Setree testified as follows:

Q (By Ms. Zmroczek) What were you able to identify?
A (By: Ms. Setree) It appears as though there is possibly a passenger, or someone in the vehicle with a blue-in-color shirt or jacket, and it seems though the driver is wearing a white, a white shirt.
ROA at 818, ll 2-5

The assistant solicitor extensively cross-examined Ms. Setree about the alleged passenger. ROA at 845, l 23 to 853, l 10. In arguing as to why the hand of one charge was proper, he pointed to nothing in the record that supported that the alleged other occupant of the car was involved in any planning of the shooting or assisted the alleged shooter in any way. Even if the speculative testimony about a passenger being involved is true, nothing in the record suggests the passenger and the driver were involved in any planning of any shooting. The position of the State had always been that the rifle was fired from the driver's side and that explained why no shell casings were found at the scene on Devoe Drive. ROA at 419, l 13 to 420, l 20.

Recently, the South Carolina Supreme Court said, as to when a hand of one is the hand of all charge should be given, "[I]n a murder case involving a gunshot, the trial court should charge the law of accomplice liability when there is any evidence (1) the defendant had a mutual plan or agreement with another person to commit the murder, and (2) the other person in the mutual plan or agreement fired the fatal shot." *State v. Johnson*, 444 S.C. 442, 449-450, 908 S.E.2d 102, 106 (2024). In the present case there is no evidence of any mutual plan or agreement by anyone. For all this record shows the driver could have been simply driving by the house when the shots were fired by the passenger with no planning.

This Court has held, "Our supreme court has noted that '[l]ike a lesser-included offense, an alternate theory of liability may only be charged when the evidence is equivocal on some

integral fact and the jury has been presented with evidence upon which it could rely to find the existence or nonexistence of that fact.'" *Wilds v. State*, 407 S.C. 432, 438–39, 756 S.E.2d 387, 390 (Ct. App. 2014)(internal citations omitted). The supreme court has stated, "Like a lesser-included offense, an alternate theory of liability may only be charged when the evidence is equivocal on some integral fact and the jury has been presented with evidence upon which it could rely to find the existence or nonexistence of that fact." *Barber v. State*, 393 S.C. 232, 236, 712 S.E.2d 436, 439 (2011).

In this case there is no testimony to suggest any planning of any attack on the house at 209 Devoe Drive. Without some evidence to support a claim of planning, the charge should not have been given. In addition, the State presented no testimony to support a theory that a person other than Mr. Stevenson did the shooting. Even assuming there is another person in the automobile, there is no testimony as to who the shooter was. To support the accomplice charge, there must be evidence that a person other than the defendant did the actual shooting. Any such evidence in this case is speculative at best.

In discussing this charge the trial court said:

> The issue is that the jury, if they look at that and they say, well, whether there's a dog there or not there's definitely a person in blue and it could have been the person in blue who did it, and that it could have been your client who was driving, so the person in blue is the shooter, and they need to know that for the law, the hand of one, the hand of all, which the driver would still be responsible.
> ROA at 944, l 22 to 945, l 3.

The problem with the theory cited by the trial judge is simply because the jury may believe there are two people in the automobile does not mean there was pre-planning by the two to commit a shooting at the residence of 209 Devoe Drive. Without some evidence of pre-planning, there is no basis for the accomplice charge.

Interestingly in this case, defense counsel attempt to elicit third party guilt. The trial judge, in ruling on the accomplice charged stated:

> And there was even evidence in the State's case in chief before there was an objection to third-party guilt about someone else's cellphone being in the vicinity, which the jury – I mean, you asked either Jordan or someone clarifying that his cellphone was, in fact, in the vicinity.
> ROA at 944, ll 9-13.

Defense counsel requested a jury charge on third party guilt based upon the same evidence. ROA at 955, ll 12-25. The trial court denied the charge erroneously saying "I don't think the door has been opened based on hand of one hand of all, because the facts would show they did it together, not that he wasn't there." ROA at 955, l 25 to 956, l 3. The trial judge cited no trial testimony to support the proposition that an agreement of any type existed for them to "do it together."

As to third-party guilt, the supreme court has said, "But before such testimony can be received, there must be such proof of connection with it, such a train of facts or circumstances, as tends clearly to point out such other person as the guilty party." *State v. Gregory*, 198 S.C. 98, 16 S.E.2d 532, 535 (1941). In this case the evidence does not tend to clearly point out such other person is the guilty party. The same vague evidence should not per permitted to point out that there is an accomplice in this case. This inconsistency was noted by Justice Hill in his dissent in *Johnson*. He stated, after citing the fact of the case, "This suspicion, in turn, is enough to permit the jury to find a mutual plan was in place. Yet, the third party-guilt doctrine would bar a defendant admitting the same type of evidence to suggest another person committed the crime." *Id.* at 457, 908 S.E.2d at 109. (Hill, dissenting). The evidence of a mutual agreement in the *Johnson* was substantially greater than in the present case. In *Johnson*, there was a video of Mr.

Johnson and another person going into the apartment where the murder occurred and video of them leaving. There had also been testimony of Mr. Johnson attempting to solicit help from someone other than the person in the video in trying to murder the deceased. The evidence of a third party being the shooter and of any planning in this case pales in comparison.

In this case the verdict of the jury indicates they believed Mr. Stevenson did not fire the weapon as they acquitted him of the possession of a firearm in a violent crime. The accomplice charge gave the jury a basis for convicting Mr. Stevenson on the totally speculative conclusion that an agreement to shoot the house at 209 Devoe Drive existed. No such testimony exists in this case. The State must prove more than mere presence. This Court has approved a jury charge that said, "To be liable as an accomplice, the defendants must have knowledge of the principal's criminal conduct. Now, mere presence at the scene of the crime is not sufficient to establish—to establish guilt as an accomplice." *State v. Staten*, 364 S.C. 7, 41, 610 S.E.2d 823, 840 (Ct. App. 2005). Assuming there were two people in the automobile and one fired a rifle, has the state established more than mere presence? A passenger is not liable as an accessory simply because a driver shoots. And a driver is not liable as an accessory simply because the passenger shoots. The state is required to prove more than mere presence before an accomplice charge can be given. The State in this case did not prove more than the possibility of two people being in the automobile.

In this case, after about five and a half hours of deliberation, the jury stated they were not able to reach a verdict and an *Allen* charge was given. ROA at 1046, l 18 to 1048, l 12. After another three and a half hours of deliberations, the jury asked about the hand of one being the hand of all apply to the possession charge. ROA at 1049, ll 2-10. At that point the judge again

charged the law of accomplice. ROA at 1051, l 25 to 1054, l 24. Shortly after being recharged as to accomplice liability, the jury returned a verdict against Mr. Stevenson for murder and not guilty for the possession of a firearm while engaged in a violent crime. The jury used the law of accessory, of which there was no evidence in this case, to convict Mr. Stevenson. The jury charge as to accomplice liability should not have been given. The accomplice charge created "a reasonable likelihood that the jury applied the challenged instruction in a way that violates the Constitution." *Aleksey*, at 27, 538 S.E.2d at 251. The charge enabled the jury to convict Mr. Stevenson on a standard that is less than that established in *Jackson v. Virginia*, 443 U.S. 307 (1979). The conviction should be reversed and remanded for a new trial.

CONCLUSION

For the foregoing reasons, this Court should reverse the conviction of Troy Stevenson. As to Question I, this Court should remand the case to the lower court to determine if the discovery violation was willful and instruct the lower court, if the violation was willful to prevent the evidence from being admitted at any new trial.

May 30, 2025

C, Rauch Wise
305 Main Street
Greenwood, SC 29646
(864) 229-5010
rauchwise@gmail.com
S. C. Bar № 6188

Attorney for
Troy C. Stevenson, Jr.