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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SAMANTHA FORD RABON,

APPELLANT

APPELLATE CASE NO. 2024-000330

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

STATEMENT OF ISSUE ON APPEAL

I. Did the trial court err in failing to direct a verdict in favor of appellant on indictments for two murders committed by Randy Grainger under an alleged murder-for-hire conspiracy when, taking the evidence in the light most favorable to the state, the alleged actions of appellant in assisting Grainger amounted to criminal responsibility as an accessory before the fact and not as a principal, thereby impermissibly allowing the state to extend the reach of accomplice liability under the hand of one hand of all theory?

II. Did the trial court err in failing to suppress evidence collected from appellant's home under a search warrant that contained material omissions of facts that negated a finding of probable cause in violation of the Fourth Amendment?

III. Did the trial court err in finding a facially defective search warrant that misidentified the location and source of a cell phone, that was itself improperly seized in violation of the Fourth Amendment, was excused since the cell phone was subject to inevitable discovery?

IV. Did the trial court err in failing to charge the jury regarding third-party guilt when evidence was introduced during trial that raised a reasonable inference that appellant was innocent and a third-party was the conspirator in the crimes charged?

V. Did the trial court err in allowing co-defendant Randy Grainger to speculate regarding his fear that appellant would have her own kids killed for profit when the money appellant inherited from her murdered father and brother ran out?

STATEMENT OF THE CASE

On February 28, 2024, a Horry County grand jury indicted Appellant for two counts of murder (2021-GS-26-4432 and 2021-GS-26-4433); two counts of solicitation to commit a felony (2022-GS-26-4620 and 2022-GS-26-4622); and two counts of criminal conspiracy (2022-GS-26-4444 and 2022-GS-26-4445) arising out of the death of her father, Robert Ford, and her brother, Robbie Ford, who were shot and killed on August 17, 2018. R. 1086-1087; 1090; 1093-1094; 1097-1098; 1101-1102; 1105-1106; 1109-1112. The state also indicted appellant as an accessory before the fact under S.C. Code Ann. § 16-1-40 (1976 as amended). However, before trial, the state dismissed the accessory indictments. R. 1109. The state, represented by Mary-Ellen Walter and Leigh Andrew Waller, called the case for trial before the Honorable Benjamin Culbertson and a jury on February 20 – 28, 2024. R. 1. Stephen Grooms and Bradley Richardson represented appellant. R. 1. The jury found appellant guilty as indicted on all charges. R. 1049, l. 8 – 1050, l. 16. Judge Culberston sentenced appellant to life for each of the murder convictions, five years for each of the conspiracy convictions, and ten years for each of the solicitation convictions, all sentences to run consecutively. R. 1056, l. 22 – 1057, l. 8. R. 1088-1089; 1091-1092; 1095-1096; 1099-1100; 1103-1104; 1107-1108.

On March 1, 2024, appellant filed her notice of appeal. This brief follows.

ARGUMENT

I. The trial court erred in failing to direct a verdict in favor of appellant on indictments for two murders committed by Randy Grainger under an alleged murder-for-hire conspiracy when, taking the evidence in the light most favorable to the state, the alleged actions of appellant in assisting Grainger amounted to criminal responsibility as an accessory before the fact and not as a principal, thereby impermissibly allowing the state to extend the reach of accomplice liability under the hand of one hand of all theory.

A. Standard of Review

This Court reviews the denial of a directed verdict motion in a criminal case under the any evidence standard of review. "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury." State v. Harris, 413 S.C. 454, 457, 776 S.E.2d 365, 366 (2015). "When reviewing a denial of a directed verdict, this Court views the evidence and all reasonable inferences in the light most favorable to the state." State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006).

B. Relevant facts.

The state indicted appellant as both a principal for murder under S.C. Code Ann. § 16-3-10 (1976 as amended) and as an accessory before the fact under S.C. Code Ann. § 16-1-40 (1976 as amended) in the deaths of Robert and Robbie Ford. However, before trial, the state dismissed the accessory indictments, electing to try appellant solely under S.C. Code Ann. § 16-3-10 (1976 as amended). R. 1109. The language of the murder indictments mirror each other (except for the name of the victim) asserting:

> That Samantha Ford Rabon did, in Horry County, on or about August 17, 2018, willfully, feloniously, and intentionally kill the victim, Robert Ford, Jr., with malice aforethought, either express or implied, by means of shooting, and the victim did die as a proximate result thereof on or about August 17, 2018 in Horry

> County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

R. 1086-1087; 1090.

The evidence introduced at trial established that Randy Grainger shot and killed both Robert and Robbie Ford as he freely admitted to killing both men. R. 786, ll. 13 – 25. Grainger asserted he was hired to kill them by appellant in exchange for the payment of $20,000.00. R. 758, ll. 5 – 21; 771, ll. 12 – 23. Grainger claimed he both met and spoke to appellant on a single occasion, approximately one week before the murders, and planned the entire crime at that single meeting. R. 758, l. 22 – 760, l. 10. Prior to this meeting, Grainger did not know appellant from "Adam's house cat." R. 813, ll. 3 – 7. During this single meeting, Grainger claimed appellant supplied a handgun to be used during the murders:

> Well, she -- she gave me a .38 and told me to use that and said she had stole it from her daddy's house when she went over to do some cleaning, and she wanted it to look like a robbery -- a robbery gone bad.

R. 757, ll. 9 – 12.

Teresa Martin, Grainger's girlfriend, allegedly handled all direct communication with appellant from that moment forward since it was less suspicious for Martin to contact appellant. R. 771, ll. 10 – 23.

> Q You just said that you didn't want there to be any sort of trail between you and the defendant. What do you mean?
>
> A Well, that's -- I never -- *the only time I ever spoke to her was that day on the porch. I never called her, texted her, contacted her no kind of way that would lead back to me and her having contact with each other.* Because I knew if -- she probably would be the first suspect because she was the one who was going to inherit everything that -- you know, usually whoever is going to inherit is usually the first suspect.

R. 758, l. 22 – 759, l. 7 (emphasis added).

On the day of the murders approximately one week later, Martin drove Grainger close to the Ford home and dropped him off around 5:30 p.m. R. 761, ll. 13 – 763, l. 25. Grainger then walked to a concealed area on the property and waited for the next three hours for the Fords to get home. R. 764, ll. 1 – 24. When the Fords arrived home, Grainger stepped from cover and shot Robert Ford in the back of the head as Robert walked up the rear stairs of the home; then shot and injured Robbie Ford near the vehicle in which they arrived home. R. 765, ll. 1 – 7. To be sure both were dead, Grainger then walked to the injured Robbie and shot him in the back of the head. R. 766, ll. 1 – 5. Grainger then did the same to Robert. R. 766, ll. 6 – 11. After killing both Robert and Robbie Ford, Grainger took keys to a vehicle and the wallets from the Fords' pockets and drove their vehicle away from the scene. Grainger travelled across Horry County approximately 20 miles towards the home he shared with Martin. R. 767, l. 1 - 12. Grainger then pulled the vehicle off the road, changed some of his clothing, and set the interior of the vehicle on fire in an attempt to destroy evidence such as his DNA.[1] R. 768, ll. 11 - 22. Grainger then walked for a period of time before contacting Martin by cell phone, who then picked Grainger up as he walked toward their shared home. R. 770, l. 4 - 22. There was no evidence presented by the state that appellant was in the vicinity of the Ford home or took an active role in the actions of Grainger on the day of the murders.

At the close of the state's case, counsel for appellant moved for a directed verdict on the murder indictment.

> The State's failed to show Samantha Ford Rabon was anywhere near the scene of the murder. To the contrary, they have shown she was not near the scene immediately prior to, during, or immediately afterwards. They failed to show she was the getaway

[1] Grainger dropped several cigarette buds at this location and the fire did not completely consume the clothing he left in the vehicle. Ultimately, his DNA was extracted from these pieces of evidence and introduced during appellant's trial. R. 477, l. 4 – 478, l. 16; 487, l. 2 – 488, l. 23.

> driver or had any contact with anyone in close proximity to the timing, Your Honor.
>
> In the light most favorable to the State, we concede that Teresa and Randy, they may have the conspiracy and solicitation charge at least enough to put back to the jury, but they can't put her at the scene at the time, Your Honor.

R. 821, l. 23 - 822, l. 9. In response, the state argued accomplice liability applied under the hand of one hand of all theory, noting: "She gave him the murder weapon and told them -- told him or told Teresa when they'd be home, where to find them, when it had to be done." R. 1113, ll. 9-15. Relying on the accomplice liability theory of hand of one hand of all and "constructive presence," the trial court denied the motion and submitted the case to the jury.

During argument on the directed verdict motion, the trial court noted:

> THE COURT: Give me whatever you want. I mean, I think the critical thing is, is supplying a murder weapon, does that constitute the "hand of one is the hand of all"? I mean, I don't think there's any dispute she was not there. She didn't drive him there. She didn't assist -- as I understand the State's reliance saying she aided and abetted is the providing the murder weapon and telling them the date and the time and the place.

R. 1114, l. 20 – 1115, l. 2.

Ultimately, the trial court denied the motion for a directed verdict, ruling:

> THE COURT: All right. Well, I agree that the "hand of one, hand of all" requires either actual presence, which we do not have in this case, or what's referred to as constructive presence. There's no appellate decision that defines what constructive presence is.
>
> However, the State has presented two cases. And, Mr. Richardson, you presented one: State v. Chavis. And State v. Condrey -- I mean, the State presented State v. Condrey, which had convictions under "the hand of one is the hand of all" when neither party was actually present at the commission of the crime.
>
> One of them dealt with planning and providing a firearm for a robbery and then was not there at the time of the robbery, but they

> said the participation – that got them around the directed verdict stage.
>
> And then, in Condrey, it dealt with a person charged with grand larceny who basically bought shoes off an 18-wheeler that had been stolen from a factory. One wasn't there when the shoes were stolen from the factory but they said it was part of a common scheme and plan, and so he was not entitled to a directed verdict on "the hand of one is the hand of all" ---
> MR. RICHARDSON: And, Your Honor –
>
> THE COURT: -- position by the State. Yes?
>
> MR. RICHARDSON: With regard to Condrey -- and I may be wrong, but as I recall the facts on that, the truck was actually driven by a delivery driver for Shoe Show out of Charlotte, and he met with Condrey, and they took the boxes off. And that was the grand larceny. He was aiding and abetting the person present whenever the shoes were being removed and placed in the car. So he did take some action with regard to the loss.
>
> THE COURT: Well, and I understand that, but I think viewing the evidence in the light most favorable to the State at this juncture, saying that there was a solicitation and that the defendant provided the firearm and the information as to when and where the victims were going to be at home, that gets -- gets the State around the directed verdict, and so I'm going to deny the motion for directed verdict.

R. 825, l. 4 – 826, l. 19.

C. Discussion.

This issue involves the distinction between being criminally liable as an accomplice versus as an accessory to the criminal act. The common law has a clear distinction between the two sources of criminal responsibility:

> The common law clearly distinguished between principals and accessories in the crime of murder. That distinction has been recognized in the judicial history of this state. While the punishment of principals and accessories before the fact in felonies is the same under section 919, volume 2 of the Code 1922, this court has recognized the distinction between principals and accessories before the fact.

State v. Jennings, 158 S.C. 422, 155 S.E. 621, 622 (1930).

"Guilt as a principal is established by presence at the scene as a result of prearrangement to aid, encourage, or abet in the perpetration of a crime." State v. Chavis, 277 S.C. 521, 522, 290 S.E.2d 412, 412 (1982). Some level of physical participation during the commission of the actual crime is required to charge an individual as a principal. *See* Id., at 523, 290 S.E.2d at 413 ("In the present case, evidence indicates appellant helped plan the robbery, appeared at the scene prior to the crime, provided necessary weapons and tools, and received a portion of the proceeds. Even though he did not accompany the actual perpetrators, submission of the case to the jury is justified."). In State v. Brazzell, 223 S.C. 103, 74 S.E.2d 573 (1953), our Supreme Court noted that evidence presented was "undisputed that appellant took no part in the actual robbery and was not present at the time of its commission. Neither did he act as a watcher, take any part in the commission of the crime or aid in the escape of those engaged in the immediate commission of the unlawful act." Id., 223 S.C. at 107–08, 74 S.E.2d at 574–75.

By contrast, State v. Condrey, 349 S.C. 184, 562 S.E.2d 320 (Ct. App. 2002), relied upon by the trial court in denying the motion, showed just such active participation as an accomplice:

> The evidence at trial supported the charge regarding the "hand of one is the hand of all." The State presented direct evidence showing the joint criminal activities of Condrey and West. West testified Condrey approached him about getting some shoes. *The men then planned several meetings where West unloaded the shoes off of the Shoe Show truck onto Condrey's vehicle. Condrey paid West for the shoes. Thereafter, Condrey sold them at the flea market.* The trial testimony constituted sufficient evidence whereby a jury could find Condrey was a willing accomplice in the crimes.

Condrey, 349 S.C. at 194–95, 562 S.E.2d at 325 (emphasis added). In Condrey, the accused actively participated in criminal activity by assisting the principal in the actual theft of the shoes from the transport vehicle when they were stolen.

In electing to try appellant for murder under S.C. Code Ann. § 16-3-10 (1976 as amended) rather than as an accessory before the fact under S.C. Code Ann. § 16-1-40 (1976 as amended), the state assumed the burden to establish appellant was a principal in the murders. To meet this burden, the state argued that appellant fell under the accomplice liability through the hand of one hand of all reasoning. To avoid the impact dictated by its election to indict appellant as a principal, the state attempted to stretch accomplice liability beyond any semblance of an active participant in the crime to encompass all people connected in the chain of events leading to the crime. This is a path this Court should reject since a well-developed field of law exists that encompasses those that aide or abet in a crime before the act.

Accomplice liability, under the hand of one hand of all, requires more than mere presence—it requires some active participation beyond the mere discussion or planning of a criminal event.

> The doctrine of accomplice liability arises from the theory that "the hand of one is the hand of all." 23 S.C. Jur. Homicide § 22.1 (2014). Under this theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose. State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010). *A person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act to be guilty under a theory of accomplice liability.* State v. Langley, 334 S.C. 643, 648–49, 515 S.E.2d 98, 101 (1999). Accordingly, proof of mere presence is insufficient, and the State must present evidence the participant knew of the principal's criminal conduct. State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 272 (1987). If "a person was 'present abetting while any act necessary to constitute the offense

> [was] being performed through another,' he could be charged as a principal—even 'though [that act was] not the whole thing necessary.'" Rosemond v. United States, —— U.S. ——, 134 S. Ct. 1240, 1246, 188 L.Ed.2d 248 (2014) (alteration in original) (quoting 1 J. Bishop, Commentaries on the Criminal Law § 649, p. 392 (7th ed. 1882)).

State v. Reid, 408 S.C. 461, 472–73, 758 S.E.2d 904, 910 (2014) (emphasis added).

Appellant acknowledges it is "well-settled that a defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense" State v. Dickman, 341 S.C. 293, 295, 534 S.E.2d 268, 269 (2000). However, under such an indictment, the facts presented during trial must establish accomplice liability, typically through affirmative acts of participation as an accomplice, as opposed to facts establishing being an accessory before (or after) the fact.

The facts in the present case, taken in the light most favorable to the state, fit within the confines of accessory before the fact, not as an accomplice to the principal. Our Supreme Court examined analogous factual allegations in the companion cases of State v. Smith, 316 S.C. 53, 447 S.E.2d 175 (1993) and State v. Prince, 316 S.C. 57, 447 S.E.2d 177 (1993).[2] Smith and Prince were alleged to have solicited and conspired with other individuals to kill a business associate, Billy Graham, to further their financial interests. Another individual, Charles McCray, confessed to killing Graham as a murder for hire and the state was able to establish McCray had been murdered. Prince, 316 S.C. at 60–61, 447 S.E.2d at 179.

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[2] Both Smith and Prince were indicted for murder as well as conspiracy, solicitation, and accessory. At the close of the state's case, both were granted a directed verdict on the murder charge, in contrast with appellant's case. *See* Prince, 316 S.C. at 62, 447 S.E.2d at 180 ("At the conclusion of the State's case, the trial judge granted a directed verdict to Smith and Prince on the charge of murder but denied Prince's motions on the charge of accessory before the fact of murder and conspiracy.")

In noting the sufficiency of the evidence to support accessory liability as an accessory before the fact, our Supreme Court noted: "Accessory before the fact of murder requires a showing that the accused: (1) either advised and agreed, urged, or in some way aided some other person to commit the offense; (2) *was not present when the offense was committed*; and (3) that some principal committed the crime." Smith, 316 S.C. at 55, 447 S.E.2d at 176 (emphasis added). The state could have proceeded against appellant under the facts presented during trial as an accessory before the fact under S.C. Code Ann. § 16-1-40 (1976 as amended) under their original indictments. Under Smith, the fact appellant was "not present" would have been an element of the offense the state was required to establish and would have fit the evidence the state presented during trial. However, since the state elected to try appellant for murder as a principal under S.C. Code Ann. § 16-3-10 (1976 as amended) and dismiss the indictments for accessory before the fact under S.C. Code Ann. § 16-1-40 (1976 as amended), some evidence was required of appellant's presence to aid and abet the commission of the crime when it occurred. Evidence of prior planning and aid a week before was insufficient.

Here, the state produced evidence that appellant solicited Grainger to commit the murders and provided Grainger with information and a weapon to accomplish the crime *a full week before the murders*. While the state produced evidence that Grainger committed the crime, it produced no evidence that appellant was an accomplice who actively participated in the criminal act under hand of one hand of all. Under Smith, criminal responsibility would have attached as an accessory before the fact, not as a principal or accomplice.

The trial court erred in failing to direct a verdict on the two indictments for murder. This Court should reverse as to those indictments.

II. The trial court erred in failing to suppress evidence collected from appellant's home under a search warrant that contained material omissions of facts that negated a finding of probable cause in violation of the Fourth Amendment.

A. Standard of Review

[A]ppellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis. This dual inquiry means we review the trial court's factual findings for any evidentiary support, but the ultimate legal conclusion—in this case whether [probable cause] exists—is a question of law subject to *de novo* review." State v. Frasier, 437 S.C. 625, 633–34, 879 S.E.2d 762, 766 (2022). While State v. Frasier dealt with reasonable suspicion, the same logic applies to all Fourth Amendment matters, including the determination by a magistrate of probable cause. This is a departure from prior decisions by our Supreme Court regarding showing deference to the probable cause determination of a magistrate. *See* State v. Jones, 435 S.C. 138, 143, 866 S.E.2d 558, 561 (2021) ("As to the validity of a search warrant, we have noted that '[a] magistrate's determination of probable cause to search is entitled to substantial deference ... on review.'") (*quoting* State v. Crane, 296 S.C. 336, 339, 372 S.E.2d 587, 588 (1988)). "The critical element in a reasonable search is not that the owner of the property is suspected of crime but that there is reasonable cause to believe that the specific 'things' to be searched for and seized are located on the property to which entry is sought." Zurcher v. Stanford Daily, 436 U.S. 547, 556 (1978).

B. Relevant facts.

In the present case, Robert and Robbie Ford were murdered at the Ford residence on August 17, 2018. On the second anniversary of the murders, Detective D.J. Dudley[3] signed an affidavit in support of a search warrant of the Ford home, then occupied and owned by appellant. R. 1062-63. This affidavit contained the following statements as the sole basis for the determination of probable cause:

> On August 18, 2018 an investigation began into the deaths of Robert and Robbie Ford, who were found deceased at the rear of this locations form multiple gun-shot wounds. During the investigation, it was learned that there was a burglary at this residence on October 2, 2017, during which a .38 caliber Charter Arms revolver with brown grips and black metal was reported stolen.
>
> Due to *witness statements* it is believed the firearm reported to be stolen from the residence on October 2, 2017 was the same weapon used to commit the murders at the residence on August 17, 2018.
>
> Based on *witness statements* and evidence collected during this investigation, it is known that a co-conspirator to the murder, now resides at this residence. It is believed that a search of this residence will aid in the investigation on produce evidence directly related to the crime.

R. 1060-61 (emphasis added).

Appellant's counsel moved to suppress all evidence obtained in connection with this search warrant since it contained material misrepresentations and omissions related to the gun and the nature of the alleged witnesses involved. Specifically, appellant's counsel noted that the statements concerning the gun were provided by a single witness – not the "witness statements" provided to the magistrate which implied multiple sources – who were not identified by name or

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[3] The state admitted Dudley was fired before trial due to mishandling of evidence. R. 43, ll. 6 – 19. This included mishandling of evidence related to the state's investigation of appellant. R. 850, 5 – 23.

connection to the information to indicate reliability. R. 49, l. 13 – 51, l. 16. In addition, the information that the alleged gun that was connected to both the earlier robbery and the murders had been disposed of by being thrown into a river and would not be found at the location to be searched was conveniently omitted by Dudley. R. 50, ll. 4 – 18. While the state supplied an affidavit from the magistrate that affidavits are often supplemented, no such supplementation was acknowledged by the magistrate for this search warrant. R. 54, ll. 10 – 16.

The trial court initially ruled that "I'm denying your motion *in limine*. I can't rule as a matter of law that it's inadmissible. They still have to lay their foundation, but I can't rule that it's inadmissible in a motion for *in limine*." R. 57, ll. 11 – 15. Upon prompting, the trial court clarified the ruling, noting "I may have worded it improperly. I am denying the defendant's motion to suppress the search warrant." R. 58, ll. 1 -3.

The trial court's error centers on the lack of any indicia of reliability and the conclusory nature of the probable cause allegations. The affidavit notes "witness statements" when in fact, the alleged statements connecting appellant to the murders were provided by a single witness: Teressa Martin, during a single interrogation. R. 53, ll. 5 – 16. Martin is neither named nor is any explanation provided to the magistrate as to why the investigator who signed the warrant, Detective Dudley, believed Martin provided reliable information. Also kept from the magistrate was information that Martin was connected to the alleged crime as a co-conspirator.[4]

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[4] Martin was charged with and pled guilty to accessory after the fact and was pending sentencing based upon her agreement to testify during appellant's trial. The statement supporting the affidavit was provided following her arrest and custodial interrogation, information also omitted from the affidavit. R. 259, ll. 1- 21.

C. Discussion.

The present affidavit is similar to the affidavit our Supreme Court reviewed in State v. Warner, 436 S.C. 395, 872 S.E.2d 638 (2022), which contained scant details connecting the supposed "witness" with knowledge and reliability supporting a probable cause determination. In Warner, the affidavit stated "Information was received through crime stoppers indicating that Justin Warner is a possible suspect. The informant's information was corroborated and a record search revealed that Warner has this listed number to him." Warner, 436 S.C. at 404, 872 S.E.2d at 642. Our Supreme Court noted that the "affidavit attached to this warrant provided the magistrate no facts or circumstances whatsoever; only the conclusory statement that some unnamed person considered Warner as a suspect based on unprovided information." Id.

In the present case, as in Warner, the magistrate is left to guess who the "witness statements" came from and there is no indication of any basis on which to rely upon such "statements", not even the conclusory claim that the information was "corroborated."

> While we have recognized—recently—that "[p]robable cause ... is not a high bar," State v. Jones, 435 S.C. 138, 145, 866 S.E.2d 558, 562 (2021) (*quoting* Kaley v. United States, 571 U.S. 320, 338, 134 S. Ct. 1090, 1103, 188 L. Ed. 2d 46, 62 (2014)), *it is by no means a toothless standard.*

Warner, 436 S.C. at 404, 872 S.E.2d at 642 (emphasis added). Here, as in Warner, the magistrate was left to speculate on the reliability of the alleged "witness statements" and whether they supported a finding of probable cause. While this Court would be correct to defer to a credibility finding (by the magistrate or the trial judge for a witness who appeared before them), whether or not this affidavit, on its face, supports a finding of probable cause, is a matter of law for this Court to decide.

As our Supreme Court noted in State v. Dill, 423 S.C. 534, 816 S.E.2d 557 (2018), the affidavit supporting a warrant cannot leave critical questions to speculation. In setting aside a finding of probable cause based upon conclusory claims, the Court noted:

> Also, the affidavit, as written, supplies no information supporting the initial mere conclusory assertion that there was 'an active methamphetamine lab ... in operation.' In particular, the affidavit does not relate who gave Moody this crucial information. Sergeant Moody's oral testimony to the magistrate did not provide any information as to the source of the information that an active lab was in operation; therefore, there was nothing presented to the magistrate to support a finding of probable cause that there was an active lab in operation.

Dill, 423 S.C. at 542-43, 816 S.E.2d at 562. Here, the magistrate was left to speculate on the phrase "witness statements" as being a single witness providing several statements, or several witnesses supplying separate statements. Was the "witness" a confidential informant, a fact witness, or a participant in the crime? The supporting affidavit leaves the magistrate to guess at the answers to each of these questions and, as held in Dill, fails to support a finding of probable cause.

This is further supported by the state's treatment in the affidavit of the existence of the alleged firearm connected to the murders in the affidavit. The affidavit mentions the firearm as being connected to the property and the murders. It specifically omits the information provided by the lone witness (Martin) that the firearm itself was disposed of by Grainger by tossing it in a local river. In terms of this firearm and its impact on the probable cause finding, guidance can be found in State v. Thompson, 419 S.C. 250, 797 S.E.2d 716 (2017), where our Supreme Court reviewed the dearth of relevant and recent information confirming that "specific things" would probably be found by searching the property.

> However, in this case, only two pieces of information in the affidavit tie drug activity to 120 River Street: (1) a 2009 hearsay

> statement that cocaine was delivered there "on several different occasions"; and (2) the assertion that "in the six months preceding the affidavit, investigators 'witnessed Thompson visit this 120 River Street address just before making cocaine deliveries throughout Spartanburg.'

Thompson, 419 S.C. at 258, 797 S.E.2d at 720.

"In determining whether a search warrant is supported by probable cause, the crucial element is not whether the target of the search is suspected of a crime, but whether it is reasonable to believe that the items to be seized will be found in the place to be searched." Id., 419 S.C. at 256, 797 S.E.2d at 719. Here, as argued by appellant's counsel regarding what the affidavit should have said, there was no gun to be found and Dudley, when he signed the affidavit, knew there was no gun to be found at the location to be searched. R. 51, ll. 6 – 16.

"[T]he primary issue before this Court is whether excluding the false information and inserting the exculpatory statement, there remains a substantial basis upon which the magistrate could have found probable cause to issue the warrant." State v. Missouri, 337 S.C. 548, 555, 524 S.E.2d 394, 397 (1999). As in Missouri, the affidavit would have been required to add the "gun is not there" language. As in Warner, some information regarding the source of the witness's knowledge would have been required. As in State v. Jones, 342 S.C. 121, 536 S.E.2d 675 (2000), the affidavit contained false information regarding the identity of who supplied the information. In Jones, the confidential informant was cloaked by the term "agent," while here, the magistrate is simply supplied the generic term "witness" rather than identity of the indicted co-conspirator, Martin. As in State v. Dill, a "common sense reading to the affidavit" shows the probable cause defects cannot be cured by the conclusory statements contained in the supporting affidavit. Id., 423 S.C. at 544, 816 S.E.2d at 563. Combined, these omissions from the probable cause affidavit "instead of simply creating some uncertainty in the affidavit, the inclusion of the omitted

information creates an affirmative hurdle which the remaining portions of the affidavit must overcome." Missouri, 337 S.C. at 556, 524 S.E.2d at 398.

As the affidavit supporting the search of appellant's residence was scant and infected with inaccurate and incomplete information, the material seized pursuant to the search warrant should have been suppressed, including appellant's cell phone, discussed *infra*. In addition to the cell phone, an empty box for a firearm was seized and introduced during trial that the state argued was the source of the murder weapon supplied by appellant to Grainger. R. 529, l. 21 – 530, l. 20. Additionally, financial records showing monetary transfers and concerning the administration of the estates of the two decedents were seized and admitted, painting a picture of financial gain as the motive behind the murders. R. 526, l. 9 – 527, l. 21. As the trial court erred in finding the search warrant for 4591 Hwy 19 was supported by probable cause, it was reversible error to submit this evidence to the jury.

III. The trial court erred in finding a facially defective search warrant that misidentified the location and source of a cell phone, that was itself improperly seized in violation of the Fourth Amendment, was excused since the cell phone was subject to inevitable discovery.

A. Standard of review.

[A]ppellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis. This dual inquiry means we review the trial court's factual findings for any evidentiary support, but the ultimate legal conclusion—in this case whether [probable cause] exists—is a question of law subject to *de novo* review." State v. Frasier, 437 S.C. 625, 633–34, 879 S.E.2d 762, 766 (2022). While State v. Frasier dealt with reasonable suspicion, this same logic applies to all Fourth Amendment matters, including the determination by a magistrate of probable cause. In this respect, this is a departure from prior decisions by our Supreme Court

regarding showing deference to the probable cause determination of a magistrate. *See* State v. Jones, 435 S.C. 138, 143, 866 S.E.2d 558, 561 (2021) ("As to the validity of a search warrant, we have noted that '[a] magistrate's determination of probable cause to search is entitled to substantial deference ... on review.'") (*quoting* State v. Crane, 296 S.C. 336, 339, 372 S.E.2d 587, 588 (1988)). "The critical element in a reasonable search is not that the owner of the property is suspected of crime but that there is reasonable cause to believe that the specific 'things' to be searched for and seized are located on the property to which entry is sought." Zurcher v. Stanford Daily, 436 U.S. 547, 556 (1978).

B. Relevant facts.

Part of the "specific things" seized under the defective search warrant for appellant's residence, discussed *supra*, was a cellular phone.

To extract material from the phone, a second search warrant was obtained. R. 1078-79. This warrant alleged that the phone was obtained from Grainger's home located at 2068 Martin Street. This assertion was a material misrepresentation since the phone was obtained, not from the residence of Grainger as stated in the affidavit, but from appellant's home. Appellant's counsel moved that any search of the cell phone and the Cellebrite report be suppressed. R. 59, ll. 21-22.

The state responded by claiming the affidavit, which indicated the phone was seized from Grainger's house, was:

> sufficient if not inartfully worded because it talks about 4591 Highway 19 [appellant's residence] just above. So when – and then it has that one sentence about Randy Grainger and then says, 'On August 17th, 2020, a search warrant was executed at this location.' So it really was intended to refer to the 4591 Highway 19.

R. 69, ll. 12 – 18. As an alternative, the state argued for "inevitable discovery" since they could, as trial began, send a detective "out to get a search warrant for that phone because there is probable cause to believe that evidence of the crime is on that phone and it's been in police custody. It's not stale. No one has touched it. So probable cause still exists for the phone." R. 60, ll. 21 – 25.

The trial court questioned the "sufficient" but "inartfully worded" argument:

> Well, it's poorly worded to the fact that you're saying Randy Dean Grainger, there's a warrant for him. He lives at 2068 Martin Street, and this phone was found at 2068 Martin Street.
>
> Now, what gives you probable cause to track the contents of the phone from 4591 Highway 19 because that's where the victims were found?

R. 62, ll. 13 – 19.

Appellant's counsel noted:

> Your Honor, we're talking about a complete misidentification where you actually pointed out they said they got warrants for Randy Grainger, this phone was found there. It's not inevitable discovery.
> They could have fixed this any time. They have already searched it now so of course they want to go back and say, "We can get a search warrant now."
>
> But if you illegally search me on the street, you can't unring that bell. You can't unring this bell. They went ahead and poisoned it themselves. This is not anything that we had anything to do with. We didn't draft it. We didn't present it to the magistrate. It was their job to do that.

R. 64, ll. 2 – 14.

The trial court ultimately denied the motion, finding:

> THE COURT: Okay. I'm going to deny your motion to suppress it for this reason: The search warrant where the phone was found was for 4591 19 -- Highway 19 in Conway. It was issued August 17th,

> 2020. The return was executed on August 21st, 2020. And in that return, they have this phone listed.
>
> The description where they want to check the contents, that is for August 31st, 2020, which was ten days later, so they already had the phone in their possession at that time.
>
> MR. RICHARDSON: Yes, sir.
>
> THE COURT: So under the inevitable discovery rule, the fact that they -- it's not like they found the phone. They already had the phone.
>
> MR. RICHARDSON: They did have the phone, Your Honor.
>
> THE COURT: And so I'm going to deny your motion. I think it does fit under the inevitable discovery rule that they would be able to get it. It would have been one thing if they had -- didn't have the phone, but since they already had the phone and had had the phone for ten days -- or I don't know how long they had it, but it was – the return was ten days prior to that. So I'm going to deny the motion.

R. 66, l. 18 – 67, l. 16.

Over objection, the state then introduced text messages obtained from the cellular phone. These messages included a text exchange with Teresa Martin's phone on the day of the murders in which appellant texted "Did the car drive all right?" and Martin's response that "I'm home alone." R. 260, ll. 8 – 17; 294, ll. 5 – 22. These exchanges, according to Martin, were coded clues that Grainger was in the process of committing the murders.[5] R. 298, l. 18 – 10. In addition to the text messages exchanged with Martin, the state introduced "search history" material obtained from appellant's cell phone. R. 665, l. 4 – 666, l. 24.

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[5] Martin was consistently unclear in her memory as to whether the coded communication was by text message or phone call. R. 260, ll. 8 – 17; 294, ll. 5 – 22; 298, l. 18 – 10. The state introduced the text messages obtained under the defective warrant from appellant's phone that stated: "Did the car drive all right?" and Martin's response that "I'm home alone." R. 739, l. 23 – 740, l. 10.

C. Discussion.

This ruling, and the state's argument regarding inevitable discovery, stems from the incorrect belief that the search warrant for appellant's residence at 4591 Hwy 19 was in fact valid. This reasoning is fatally flawed, as the search warrant for 4591 Hwy 19 was constitutionally defective and the cell phone should have been suppressed along with all the other evidence seized as set forth in Argument I, *supra*.

However, in the event this Court determines the warrant for 4591 Hwy 19 to have been valid, inevitable discovery would not save the state's search of appellant's cell phone in the present case. It remains that the state did not simply "inartfully" describe the thing to be searched; the state's error created a new and distinct basis claiming probable cause existed. The state alleged that it possessed a phone seized from the residence of Randy Grainger, the individual charged with actually firing the fatal shots. Search Warrant dated September 2, 2020. This was not a mere scrivener's error that can be excused by this Court as in State v Shupper, 263 SC 53, 207 S.E.2d 799 (1974), where law enforcement erroneously typed the wrong calendar year, "January 5, 1972" rather than "January 5, 1973" In Shupper, our Supreme Court found that the error was clearly a mere typographical one that in no way affected the validity of the search warrant and further that the search actually occurred within "an hour or two" of the warrant's issuance. In contrast, the affidavit here presented the magistrate with a completely different picture from reality – that the phone had been seized in a search of Grainger's home rather that a search of appellant's home.

"The Fourth Amendment by its terms requires particularity in the warrant, not in the supporting documents." Groh v. Ramirez, 540 U.S. 551, 557 (2004). As the United State's Supreme Court noted in Groh, the warrant did not "make what fairly could be characterized as a

mere technical mistake or typographical error" but rather the "warrant did not describe the items to be seized *at all*." Id. at 558 (emphasis in original). This case more firmly falls under the guidance of Groh than Shupper, and the search warrant for the cell phone was facially invalid and the evidence seized from the phone should have been suppressed during trial.

IV. The trial court erred in failing to charge the jury regarding third-party guilt when evidence was introduced during trial that raised a reasonable inference that appellant was innocent and a third-party was the conspirator in the crimes charged.

A. Standard of Review.

"The law to be charged to the jury is determined by the evidence presented at trial." State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). "A request to charge a correct statement of the law on an issue raised by the indictment and the evidence presented at trial should not be refused." State v. Austin, 299 S.C. 456, 458, 385 S.E.2d 830, 831 (1989). "To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 583–84 (2010).

B. Relevant Facts.

Third party-guilt evidence was introduced throughout trial indicating appellant's mother, Sheila Burris, may have been the party who requested Grainger kill the Fords. Ms. Burris was implicated in a prior criminal conspiracy involving burning down a home adjacent to the Ford residence to prevent appellant from moving next to her father. R. 873, l. 1 – 874, l. 10. Burris hired an individual named Jim Price (Pee Wee)[6] to burn the home being remodeled. Horry County police obtained arrest warrants that alleged:

> On the night of June 21st, 2011, the defendants, Jim Lloyd Price and Sheila Ford Burris, did conspire together to set fire to a

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[6] The transcript frequently refers to Jim Price by his nickname, "Pee Wee." R. 308, ll. 9 – 11.

> residential structure that was being renovated. The defendants did bring a can of gas with them to the location and used it as an ignitable, which was then set on fire. The two then left the scene in a vehicle that was driven by Burris. This information was corroborated in a post-Miranda confession by Defendant and Price.

R. 879, l. 25 – 880, l. 8.

Burris failed to pay Price the agreed upon amount for the arson. R. 505, l. 23 – 506, l. 7. Police interrogated "Pee Wee" Price in connection with the murder investigation. R. 874, ll. 6 – 20. Law enforcement used this prior arson for hire episode with Price in questioning Teresa Martin about the alleged murder for hire of the Fords. R. 313, ll. 1 – 11; 505, ll. 19 – 506, l. 7.

Evidence also established that Martin and Burris had a close relationship. R. 282, ll. 15 – 24. In fact, on the night of the murders, Martin was on the phone with Burris on at least two occasions, including a lengthy call starting at 8:48 p.m. R. 256, l. 24 – 307, l. 9. Martin testified that she and Sheila would "always talk." R. 286, ll. 7 – 10. In contrast, Martin's contacts with appellant were sporadic. R. 297, ll. 1 – 19. Grainger claimed Burris was actively involved in the alleged plot, being present when the murders were planned and telling him the cameras on Burris' porch would not record the conversation. R. 756, ll. 11 – 17; 759, ll. 12 – 17.

The main source of connection between appellant and the conspiracy was the claim that Martin made during her recorded police interview when appellant's name was supplied to Martin by investigators as the person they were after. R. 504, l. 2 – 509, l. 4. Grainger remained silent until after his trial, at which time he was able to bend his testimony to Martin's statements. R. 510, l. 2 – 21; 781, l. 4 – 784, l. 10; 792, l. 6 – 794, l. 5. The evidence presented during trial would have allowed the jury to discount Martin's finger-pointing at appellant to protect her longtime friend, Burris. The jury could likewise have rejected the testimony by Grainger as to

who hired him as unreliable and fabricated to fit the narrative Martin had started, at the urging of investigators.

Counsel for appellant specifically requested a charge on third-part guilt:

> And then when we talk about evidence that tends to prove my client not guilty, it would be that the difference is that Sheila Burris is on the phone with Teresa Martin, not Samantha Rabon, during the actual crime, and then Sheila Burris is on the phone with the actual co-conspirators after the crime.
>
> So at 8:46, you've got Teresa Martin texting Randy Grainger. We know, at this point, Randy Grainger is lying in wait. There's been no communication from my client to them.
>
> You have Teresa Martin calls Sheila Burris at 8:48. That phone conversation is 27 minutes, 37 seconds. So that puts it out till 9:16. We know the murders happened during that time, and we know that Randy Grainger is texting Teresa Martin back during that time.
>
> So while she's on the phone with Sheila Burris, Randy is texting back and forth. So there's evidence that communication is going on between those three during the actual murders.
>
> And, of course, the meeting happened on Sheila Burris's porch. The arson case involved Sheila, not Samantha.

R. 945, l 20 – 946, l. 16.

In discussing the charge, the trial judge mistakenly believed counsel for appellant was required to select one theory or another – either Martin and Grainger were lying and no one was involved in a murder for hire conspiracy or Martin and Grainger were telling the truth about the murder for hire but lying about who hired them.

> THE COURT: Now, I did receive your proposed charge on third-party guilt.
>
> MR. RICHARDSON: Yes, sir.
>
> THE COURT: I'm not going to charge third-party guilt because I don't know that this is a third-party guilt. *As I view it, there is*

> *nothing against Sheila Burris that is inconsistent or tends to prove your client's innocence.* I'm not going to charge third-party guilt, but I am going to allow you to argue the fact that, look, you have Sheila Burris, you did not pursue that investigation with the same vigor that you had pursued the defendant. In other words, it's almost -- as I view your argument, it's not as much a third-party guilt as it is a rush to judgment. You have this against Sheila Burris, but you didn't investigate it to the same extent that you did the defendant.

R. 953, ll. 8 – 23 (emphasis added).

C. Discussion

This Court has recently confirmed the requirement that the trial court should charge third-party guilt when evidence entered during trial raises the issue beyond mere speculation. As this Court noted in State v. Singleton, 438 S.C. 629, 885 S.E.2d 415 (Ct. App. 2023):

> '[E]vidence of third-party guilt that only tends to raise a conjectural inference that the third party, rather than the defendant, committed the crime should be excluded.' State v. Cope, 405 S.C. 317, 341, 748 S.E.2d 194, 206 (2013) (*citing* State v. Gregory, 198 S.C. 98, 105, 16 S.E.2d 532, 534 (1941)). '[T]o be admissible, evidence of third-party guilt must be 'limited to such facts as are inconsistent with [the defendant's] own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence.'' Id. (second alteration in original) (*quoting* Gregory, 198 S.C. at 104, 16 S.E.2d at 534).

Singleton, 438 S.C. at 637, 885 S.E.2d at 419. Ultimately, this Court in Singleton determined the evidence presented during trial was not "inconsistent" with the defendant's innocence and thus, the trial court did not err in refusing to charge the jury. Id., 438 S.C. at 637–38, 885 S.E.2d at 419 (noting that the evidence asserted was not a fact that was inconsistent with Singleton's guilt or raised a reasonable inference or presumption as to innocence).

As warned by the United States Supreme Court in examining this state's treatment of third-party evidence:

> Furthermore, *as applied in this case, the South Carolina Supreme Court's rule seems to call for little, if any, examination of the credibility of the prosecution's witnesses or the reliability of its evidence.* Here, for example, the defense strenuously claimed that the prosecution's forensic evidence was so unreliable (due to mishandling and a deliberate plot to frame petitioner) that the evidence should not have even been admitted. The South Carolina Supreme Court responded that these challenges did not entirely "eviscerate" the forensic evidence and that the defense challenges went to the weight and not to the admissibility of that evidence. *Yet, in evaluating the prosecution's forensic evidence and deeming it to be "strong"—and thereby justifying exclusion of petitioner's third-party guilt evidence—the South Carolina Supreme Court made no mention of the defense challenges to the prosecution's evidence.*

Holmes v. South Carolina, 547 U.S. 319, 329 (2006) (internal citations omitted)(emphasis added).

Here, the evidence presented during trial cleared the Gregory gatekeeping bar that third-party guilt evidence be "inconsistent with [appellant's] own guilt" and did not "raise a conjectural inference as to the commission of the crime by another." State v. Gregory, 198 S.C. 98, 16 S.E.2d 532, 534 (1941). Put simply, if the jury credibly believed there was a murder for hire conspiracy, was there evidence consistent with Sheila Burris having been involved as the initiating conspirator rather than appellant? As noted, Burris had been involved in the past in a similar scheme. Burris had a significant relationship with Martin, while appellant did not. Burris contacted Martin on the night of the murders a number of times, including at least one lengthy phone call. Martin had a motive to protect Burris based upon their long relationship. Martin was made aware by law enforcement of their desire to connect appellant to the scheme during her interrogation. Finally, Grainger was able to fit his trial testimony into the outline created by Martin since he had maintained his silence throughout the investigation and during his own trial. R. 510, l. 2 – 21; 781, l. 4 – 784, l. 10; 792, l. 6 – 794, l. 5.

As warned in Holmes, the trial court erred in ruling on the credibility of the third-party guilt evidence by ignoring the appellant's attacks on the credibility of the state's witnesses and the state's investigation. By finding the evidence of third-party guilt was not "inconsistent or tends to prove your client's innocence," the trial court ignored the warning in Holmes and decided the matter based upon credibility, rather than the existence and admissibility of the evidence itself. R. 953, ll. 8 – 23 (emphasis added). Since the jury's determination of the existence of a conspiracy to commit the Ford murders relied upon the testimony of both Martin and Grainger, not only regarding the existence of the contract for hire but also the existence of who hired Grainger through contact with Martin, credibility was an essential element during trial. The assessment of credibility of those witnesses, once the trial court admitted the evidence of third-party guilt, was for the jury to evaluate with appropriate guidance on the law from the bench. *See* State v. McKerley, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012) ("The assessment of witness credibility is within the exclusive province of the jury."); Soulios v. Mills Novelty Co., 198 S.C. 355, 364, 17 S.E.2d 869, 874 (1941) ("[T]his [c]ourt has more than once held that the jury is the judge of which contradictory statement of the witness is the truth.").

By contrast, in Singleton, the evidence of third-party guilt (the presence of other parties that may have been sexually active with minor) did not involve weighing credibility--a province of the jury--and was an acknowledgement that such evidence did not exonerate Singleton and therefore, was not within the framework of third-party guilt evidence. Since the evidence presented in this case could have, depending on the jury's credibility determination, exonerated appellant, it stands on a different footing than this Court evaluated in Singleton and required the trial judge to charge the jury on third-party guilt.

By analogy, this can be seen in how courts of this state deal with other instances when evidence, properly introduced during trial, tends to exonerate a defendant from the crimes charged such as alibi and self-defense. Our Supreme Court has ordered a new trial where a judge refused to charge a jury on the law of alibi when evidence of such was properly before the jury. State v. Robbins, 275 S.C. 373, 271 S.E.2d 319 (1980). The Robbbins Court explained that "[a] charge on the defense of alibi is not required when an accused person merely denies committing the criminal act" but must be charged when the defendant asserts he "was elsewhere at the time of the [crime]." Id. at 376, 271 S.E.2d at 320.

Likewise, the trial court must charge self-defense if there is any evidence in the record "from which it can be reasonably inferred" that the accused acted in self-defense. State v. Burkhart, 350 S.C. 252, 260, 565 S.E.2d 298, 302 (2002). The South Carolina Supreme Court has long held that a trial judge has the responsibility to craft a self-defense charge tailored to the facts of a case. State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011); State v. Fuller, 297 S.C. 440, 444-45, 377 S.E.2d 328, 331 (1989). As recognized in Fuller, there is a "body of common law self-defense" and trial judges must "consider the facts and circumstances of the case at bar in order to fashion an appropriate charge." Id., 297 S.C. at 443, 377 S.E.2d at 330.

The trial judge here erred in refusing to instruct the jury regarding third party. Additionally, instructing the jury on third-party guilt would have ensured that the jury did not shift the burden of proof to the appellant in light of the evidence presented. Due to the presentation of third-party guilt evidence during trial, and the reliance of appellant's counsel on that evidence during closing argument, it was necessary to ensure the jury understood the law in South Carolina associated with third-party guilt.

V. The trial court erred in allowing co-defendant Randy Grainger to speculate regarding his fear that appellant would have her own kids killed for profit when the money appellant inherited from her murdered father and brother ran out.

A. Standard of review.

"The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion." State v. Williams, 386 S.C. 503, 509, 690 S.E.2d 62, 65 (2010). "An abuse of discretion occurs when the trial court's ruling is based on an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000) (*quoting* Clark v. Cantrell, 339 S.C. 369, 529 S.E.2d 528 (2000)).

> For an objection to be preserved for appellate review, the objection must be made at the time the evidence is presented, State v. Simpson, 325 S.C. 37, 42, 479 S.E.2d 57, 60 (1996), and with sufficient specificity to inform the circuit court judge of the point being urged by the objector, Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998).

State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011). "The requirement that a party move to strike objectionable testimony applies when an objection has been *sustained*." State v. Saltz, 346 S.C. 114, 129, 551 S.E.2d 240, 248 (2001) (emphasis in original).

B. Relevant facts.

During the state's re-direct of Grainger, the solicitor asked about his reasons for wanting to testify against appellant, inviting Grainger to speculate that appellant was a danger to everyone, including her own children:

> Q And Mr. Richardson made quite a bit of a deal about you want to see the light of day somehow, don't you?
>
> A Everybody does.
>
> Q So other than potentially seeing the light of day at some point in the future, is there any other reason why you're testifying here today?

> A Well, I give it a lot of thought. And Samantha done hired somebody to kill her brother and her daddy. When that money runs out, who is she going to kill next? Her kids? Them kids ain't hurt nobody.
>
> MR. RICHARDSON: Objection, Your Honor. That is pure speculation.
>
> THE COURT: Overruled.
>
> MS. WALTER: It's his reason for testifying.
>
> THE COURT: Overruled. I'll allow. Go ahead.
>
> MS. WALTER: Nothing further, Your Honor.

R. 818, ll. 10 – 25.

C. Discussion.

In State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001), our Supreme Court reviewed the propriety of allowing similar speculation regarding a witnesses thoughts and feelings that were not relevant to the guilt of the accused:

> The trial court abused its discretion in allowing this testimony over appellant's repeated objections. The witness's thoughts and feelings did not make the existence of any fact of consequence to the case more or less probable. On the contrary, the testimony only served "to arouse the sympathy or prejudice of the jury." *Cf.* State v. Langley, 334 S.C. 643, 647, 515 S.E.2d 98, 100 (1999) (a photograph should be excluded if it is calculated to arouse the sympathy or prejudice of the jury or is irrelevant or unnecessary to substantiate facts).

Saltz, 346 S.C. at 129, 551 S.E.2d at 248.

As in Saltz, Grainger's "reasons for testifying" were speculative and irrelevant to the issues before the jury and allowed Grainger to introduce highly prejudicial ideas that appellant was a danger to her own children.

Appellant counsel's objection that the elicited testimony was "speculative" was a sufficient contemporaneous objection to preserve this issue for appellate review. Our Supreme Court has long warned of the dangers of allowing witnesses to speculate regarding matters that are not factual or relevant before the jury. In State v. Stokes, 279 S.C. 191, 304 S.E.2d 814 (1983), it reversed a conviction when the trial judge erred and allowed "the child to speculate concerning appellant's intentions. Her testimony that appellant intended to rape her was obviously her own conclusion, rather than a fact within her personal knowledge." Stokes, 279 S.C. at 193, 304 S.E.2d at 815.

Here, as in Saltz, a contemporaneous objection was made. Here, as in Stokes, the trial court erred in allowing Grainger to speculate as to the danger appellant posed to her own children. The state then compounded the impact of this improper testimony during closing, arguing:

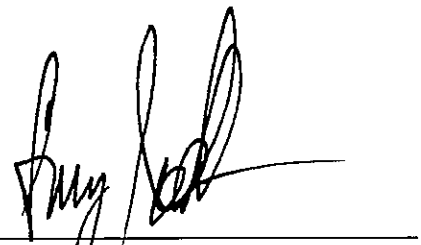
> And if you remember, [Grainger] had another reason to testify, because he's scared of what the defendant might do next when she runs through the money that she inherited by killing her father and brother. And we have already seen how quickly she spends that money through the testimony of the financial experts.

R. 968, ll. 19 – 24.

The trial court committed reversible error in admitting Grainger's speculative belief that appellant would harm her own children for money and the state further compounded the error by tainting the jury with the same image in closing argument, warranting reversal and a new trial.

CONCLUSION

This Court should reverse the trial court's denial of the directed verdict motion on the two murder charges. In addition, based upon the arguments presented, this Court should reverse appellant's convictions and remand for a new trial on the remaining charges.



Gary H Johnson
Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of August, 2025.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

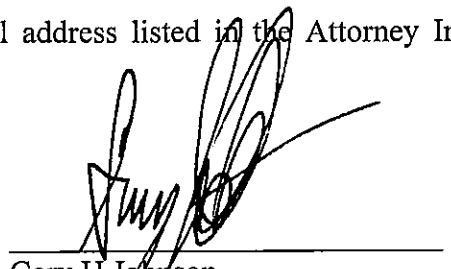
SAMANTHA FORD RABON,

APPELLANT

APPELLATE CASE NO. 2024-000330

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Appellant in the above-referenced case has been served upon Tommy Evans, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 20th day of August, 2025.



Gary H Johnson
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