STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Benjamin Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TAI'YUAN JA'REL JACKSON,

APPELLANT

APPELLATE CASE NO. 2025-000769

FINAL BRIEF OF APPELLANT

W. CHANDLER NORVILLE
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

South Carolina Cases

United States Cases

Other Jurisdictions

Statutes

Other Authorities

Rules

Constitutional Provisions

STATEMENT OF ISSUES ON APPEAL

I.

Whether the trial court erred under Rule 403, SCRE, in admitting a photograph, taken several hours before the shooting, which depicted Appellant, Hickson, and four other individuals making various unsavory gestures?

II.

Whether the trial court erred in refusing to grant Appellant's renewed motion for directed verdict, after the jury returned a guilty verdict of voluntary manslaughter, when no evidence supports that verdict?

III.

Whether the trial court gave an ambiguous supplemental jury instruction in response to the jury's first question?

STATEMENT OF THE CASE

Appellant was arrested on April 24, 2022. On January 25, 2023, the Horry County grand jury indicted Appellant for murder and possession of a weapon during the commission of a violent crime. R. 570-73. On April 7, 2025, the case was tried before the Honorable Benjamin Culbertson and a jury. R. 1. W. James Hoffmeyer represented Appellant. David Rigney represented co-defendant Jerelle Hickson (Hickson).[1] Nancy Livesay and Delbert Leasure prosecuted the case. R. 1. Appellant and Hickson were convicted of voluntary manslaughter; Appellant was also convicted of possession of a weapon during the commission of a violent crime. R. 551. He was sentenced to thirty (30) years for voluntary manslaughter and five (5) years for the weapons charge, to run concurrently. R. 567.

This appeal follows.

[1] *See State v. Jerelle Hickson*, App. Case No. 2025-000749 (Ct. App.).

STATEMENT OF FACTS

On April 24, 2022, at around 1:30 a.m., Dy'Quavyon Dickens was shot and killed in a parking lot in Myrtle Beach, South Carolina. After an investigation, the state believed Appellant and Hickson to be responsible, and the two were arrested for murder.

Appellant was acquitted of murder but convicted of voluntary manslaughter and a gun charge.[2] There was no evidence that Appellant himself had killed the victim, which both the state and trial court acknowledged during Appellant's motion for directed verdict. R. 439. However, the state asserted that it could go forward on accomplice liability. R. 439. The evidence, in relevant part, presented during the trial was as follows.

Mya Goodman testified that she had been at the parking lot and heard gun shots, but she was not sure from which direction they came or who had fired them. R. 16. Shakira Hickson (Shakira) testified that she was at the parking lot with Appellant and Hickson, her cousins, the day of the shooting. R. 52. She arrived at the parking lot in Appellant's vehicle, a gold Tahoe, and Hickson was driving a black Tahoe. R. 50-51. During Shakira's testimony, the state published a photograph showing Appellant wearing green clothes over Appellant's objection. R. 63-69; 70; State's Exhibits 42 (Photo on back of #43) and 43 (Poster: Group of people photo) (on file with this Court).

Two of the individuals in the photograph—those marked as Hickson and "LiQuan," State's Exhibit 43—are seen making signs that could be interpreted as "gang signs."[3] Hickson is holding a bottle of Hennessy, a liquor, and has a firearm in his pocket. *Id.* One of the individuals

---

[2] The state never attempted to suggest any sort of motive for these acts other than a suggestion that Appellant and Hickson just had "it" on their mind. *See, e.g.,* R. 473-74 (closing argument).

[3] It is important to note, however, that the state made no allegation of gang affiliation.

is showing both middle fingers to the camera. *Id.* Three more of the individuals are simulating brandishing firearms at the camera. *Id.*

Appellant objected to the introduction of the photograph. R. 63. He argued that while the photograph showed him in a green outfit, it also showed he and several others making "profane gestures," Hickson holding a bottle of liquor, and several of the kids making gun gestures with their hands. R. 64. The state responded that the photograph was "extremely probative" in two respects: (1) it showed Appellant and Hickson wearing the same clothes as they are wearing in the shooting video; and (2) "murder requires premeditation"[4] and the video of these individuals making gun-like hand gestures was probative of premeditation. R. 66. Defense counsel responded that the state had plenty of other evidence to show that Appellant was wearing his green clothes without the state showing this photograph. R. 67. He also argued it was "quite a leap" to assert that because they were flashing signs hours prior to the shooting, that this photograph was probative of malice or premeditation. R. 67. The trial court ultimately ruled that the probative value outweighed the prejudicial effect. R. 67.[5]

The state also published videos of Appellant's Tahoe which depicted stickers on the back windshield and a video depicting Appellant and Hickson's vehicles starting at 1:28 a.m. R. 77, 90; State's 234 (Zoomed-in parking lot videos) (on file with this Court). The latter video showed a "flash" at 1:29 a.m., but Shakira denied being able to see it on the video. R. 93. The state published another video taken around thirty minutes after the shooting which purported to show Hickson wearing a face mask. R. 96. The state also published a video from the next day, where

---

[4] Murder does not require premeditation. S.C. Code Ann. § 16-3-10 ("Murder is the killing of any person with malice aforethought, either express or implied" (internal quotation marks omitted)).

[5] The trial court did not explain its ruling beyond stating "I think the probative value outweighs the prejudicial effect." R. 67.

Appellant's and Hickson's vehicles are seen without the rear-mirror stickers. R. 105. On cross-examination, Shakira testified that she had not heard anyone express "animosity toward anyone who was shot." R. 115.

The state also called Nikera McAlister, who testified that she was also present on the day of the shooting. R. 133. She witnessed Hickson shooting a firearm, but she did not see anyone else shooting a firearm. R. 139-40.

Detective Cole Kyer took a statement from Appellant and claimed Appellant told him that he fired a gun twice in the air. R. 158; 167. Officer Shylah Davis found clothing in Appellant's Tahoe during a search. R. 222. She also located several shell casings in the parking lot that would have been near Appellant's and Hickson's vehicles. R. 238-42.

Officer Brandon George found a Glock 17 handgun in the center console of Appellant's gold Tahoe. R. 277. He further testified that a magazine found in Hickson's Tahoe could have fit in that weapon. R. 278-79. James Green was qualified as an expert in forensic firearms examination. R. 343. He testified that twenty shell casings found in the parking lot were fired by the firearm located in Appellant's vehicle. R. 345. On cross-examination, he testified that he had conclusively determined that the bullet which killed the victim was not fired by Appellant's firearm and that shell casings fired from at least five other firearms had been located in the parking lot. R. 359-60.

The state's gunshot residue (GSR) expert testified that GSR was found on the clothes found in Appellant's vehicle. R. 377. The state then called Kimberly Shupp, who was qualified as an expert in video processing. R. 399. The state used her testimony to introduce security camera footage that Ms. Shupp had zoomed in on and digitally enhanced which purported to show the shooting. R. 404; State's Exhibit 234 (on file with this Court).

Appellant moved for a directed verdict. R. 437. He argued to the trial court that no witness saw Appellant fire a gun, the bullet that killed the victim had been conclusively proven to have not been fired by the gun found in Appellant's vehicle, and that the only evidence he had fired a gun at all was his own statement to police, wherein he admitted only to firing in the air twice. R. 437-38. Both the trial court and state acknowledged that there was no evidence that Appellant had killed the victim, but the state asserted that its case could proceed to the jury on a theory of accomplice liability. R. 439.

The trial court denied the motion. R. 440. It found that "the gunshot residue found on the clothes," and the "gun found in his vehicle that had been fired 18 times," as well as the enhanced video was sufficient evidence since the state was proceeding under an accomplice liability theory as to Appellant. R. 440.

During its closing argument, the state made several references to the photograph of Appellant, Hickson, and the other four boys, asserting it was indicative of "premeditation." R. 474. For instance, the solicitor told the jury:

> Now, the question is whether or not there's premeditation and malice. Now, these two men are in Myrtle Beach for spring break. Both of them have handguns. When you see the pictures close up, you're going to be able to see that [Appellant] has a gun on him. You see the outline under the tank top. No doubt. And look what he's doing with his hand, doing that shooting thing, like he's shooting somebody with his hand. That's what's on his mind....And look at [Hickson]. He's standing there now—spring break. This is a time you're supposed to be hanging out with your friends, going to the beach. He's got a handgun in his pocket and a ski mask on in April in Myrtle Beach. A ski mask and a handgun...One of them is doing a shooting motion and the other one has got a ski mask on.
>
> I promise you, if I go into the Food Lion and I see a guy with a gun in his pocket and a ski mask, I'm turning around. I'm turning around. Why? Why? Because that tells me that that's what's on his mind. He had bad intentions when it's April and you're wearing a

> ski mask and you have got a gun in your pocket. You already have ill will, you already have premeditation, and you've already got intent. If I walk around and go in the Food Lion and I see another guy with a gun on him doing like he's shooting up the Food Lion, I'm not going in…Because I already know what's on his mind, I already know. It's spring break. Go to the beach. Go to the pool. They don't want to do that. That's not what's on their mind. This is what's on their mind. This is before they even get in the Tahoe and start riding around the strip…Ski mask, gun. The other guy has got a gun doing the shooting thing…I don't even see a gun on anybody else in the picture but the two of them at this point. So that's what's on their mind.

R. 473, l. 1 – 474, l. 25.

The trial court, over Appellant's objection, charged the jury on accomplice liability. R. 463-69; 533. The trial court's instruction on accomplice liability essentially tracked the standard language, and the language of the instruction itself was not the subject of any objection. *Compare* R. 533-26 *with* RALPH K. ANDERSON, JR., SOUTH CAROLINA REQUESTS TO CHARGE-CRIMINAL § 2-69 (3d ed. 2023).

After about ninety minutes of deliberation, the jury sent a note to the court with two questions. R. 545; 569 (Court's Exhibit 1). The second question was about an issue of fact, and the trial court correctly instructed them they must determine all issues of fact themselves. R. 545. The first question, however, stated "Is hand of one, hand of all law that has to be followed?" R. 545; R. 569 (Court's Exhibit 1).[6] Originally, the trial court wanted to respond to this question with "yes." R. 545. However, Appellant asserted this was insufficient and asked the trial court to add the qualifier "if they find 'the hand of one, hand of all' is appropriate under the facts and evidence of the case." R. 545-46. In response, the trial court then suggested the following charge: "Yes, if the state proves it beyond a reasonable doubt." R. 546; ll. 2-3.

---

[6] It appears from the note that the jury underlined the word "law," making the note read: "Is hand of one, hand of all a law that has to be followed." The significance of this is not clear.

The solicitor responded that "we probably just need to tell them...everything that was charged to you is the law and it has to be followed." R. 546, ll. 8-10. The trial court then proposed: "all charges on the law by the Court have to be followed." R. 546, ll. 15-16. Appellant again requested the trial court's previous suggestion, "Yes, if the state proves it beyond a reasonable doubt." R. 546, ll. 2-3. Hickson's attorney then pointed out that the reason the jury asked this question must be because they did not understand it as written. R. 546-47. The trial court also expressed confusion, stating: "I don't know what they're saying. I don't know whether they're asking me to comment on the evidence presented by the state or whether they have the option to choose it or not choose it." R. 547, ll. 3-6.

In response to this, Appellant requested that the trial court additionally recharge that "[the jury] is the judge of the facts and [the court] is the judge of the law." R. 548, ll. 4-5. The trial court responded that it had already done so. R. 548, l. 8. Appellant told the trial court he was concerned that the jury was asking the trial court to comment on the facts or to comment on whether, in the court's opinion, the state had proven the case beyond a reasonable doubt. R. 548. The trial court refused to charge Appellant's suggested language because it was concerned that the jury would take that to mean "well, according to him, he thinks the state has proven it." R. 548, ll. 16-25. Eventually, the trial court responded to the jury with "you must follow the law as it was charged to you by the court." R. 549, ll. 8-9.

The jury convicted Appellant and Hickson of the lesser-included offense of voluntary manslaughter. R. 551-52. Appellant renewed his motion for directed verdict and moved for a new trial. R. 555-57. Both were denied. R. 556-57.

STANDARDS OF REVIEW

When reviewing a trial court's ruling on a motion for directed verdict, this Court "must view the evidence and all reasonable inferences in the light most favorable to the state." *State v. Hepburn*, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013) (quoting *State v. Cherry*, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004)). This Court reviews the evidence using the same standard used by the trial court; if there is not "any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused," this Court must reverse. *See id.*

When reviewing an ambiguous jury instruction, this Court will reverse if there is a reasonable likelihood that the jury applied the instruction in a way that violates the Constitution. *State v. Aleksey*, 343 S.C. 20, 27, 538 S.E.2d 248, 251 (2000). When reviewing whether a jury charge should have been given at all, this Court reviews the trial court for abuse of discretion. *State v. Commander*, 396 S.C. 254, 270, 721 S.E.2d 413, 421-22 (2011). Abuse of discretion occurs when a trial court's ruling "is based on an error of law or is not supported by the evidence." *Berberich v. State*, 392 S.C. 278, 285, 709 S.E.2d 607, 611 (2011) (internal citation omitted). "An erroneous jury instruction will not result in reversal unless it causes prejudice to the appealing party." *Id.*

This Court reviews a trial court's decisions regarding the admission of evidence for abuse of discretion. *State v. Gray*, 408 S.C. 601, 608, 759 S.E.2d 160, 164 (Ct. App. 2014).

ARGUMENT

I.

The trial court abused its discretion in finding that State's Exhibits 42 and 43 were not substantially more prejudicial than probative.

"Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Rule 403, SCRE (cleaned up). Probative value is "the measure of the importance of that tendency to the outcome of the case." *Gray*, 408 S.C. at 610, 759 S.E.2d at 165. "It is the weight that a piece of relevant evidence will carry in helping the trier of fact decide the issues." *Id.* Probative value must be determined in context, considering the issues at stake to the trial of an individual case. *Id.* (citing *State v. Lyles*, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008)).

The probative value of a given piece of evidence will depend on the "scarcity or abundance of other evidence of the same point." *State v. James*, 355 S.C. 25, 35, 583 S.E.2d 745, 750 (2003) (quoting *Old Chief v. United States*, 519 U.S. 172, 185 (1997)). The more evidence there is of a particular fact, the less probative additional pieces of evidence proving that face become. *See id.*

Probative value must be weighed against the danger of unfair prejudice. Rule 403, SCRE. "Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis." *State v. Gilchrist*, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998) (quoting *United States v. Bonds*, 12 F.3d 540, 567 (6th Cir. 1993) (internal quotation marks omitted)). Like probative value, prejudice "should be evaluated in the practical context of the issues at stake in the trial of the case." *Gray*, 408 S.C. at 617, 759 S.E.2d at 169. "Evidence is

unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one." *State v. Cheeseboro*, 346 S.C. 526, 547, 552 S.E.2d 300, 311 (2001). Unfair prejudice "speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged." *Old Chief*, 519 U.S. at 180.

Here, the photograph is of very limited probative value. The state's asserted probative value was a mere smokescreen for its attempt to introduce bad character or propensity evidence based on the photograph. To the extent that it is probative to identify the clothes that Appellant was wearing, that fact was already conclusively established by several other pieces of evidence. Shakira Hickson testified that Appellant and Hickson were present in the parking lot when the shooting occurred. R. 52. Appellant's own statement was admitted, where Appellant told law enforcement that he was present and fired his gun twice in the air. R. 158; 167. Officer Shylah Davis testified that she found the green clothing in Appellant's Tahoe during a search, and this green clothing matched clothing that Appellant was wearing in a Ring Doorbell camera taken briefly after the shooting. R. 222; State's Exhibit 63. The handgun found in Appellant's Tahoe was connected to twenty shell casings found in the parking lot. R. 277, 345. And the clothes found in Appellant's Tahoe were found to contain gunshot residue. R. 399. It was conclusively proven that Appellant was at the scene of the shooting and was wearing the unique green clothes. In fact, Appellant made little or no effort to contest that fact during his defense. No further evidence could have proven that fact more conclusively than it already was. The "abundance" of evidence on that same point reduces the probative value of this photograph to near zero. *See James*, 355 S.C. at 35, 583 S.E.2d at 750.

To the extent that the photograph is meant to show "premeditation" or "malice," it is likewise not probative. For one, premeditation is not an element of murder, so the photograph is of no probative value in that regard. S.C. Code Ann. § 16-3-10. And to the extent that the solicitor meant to suggest that "premeditation" was probative as it relates to motive, a photograph taken hours before the fact containing four other individuals which the state does not allege are involved in the case is hardly suggestive of some pre-planned attack.

Relating to "malice," the photograph provides no evidence of "hatred or ill-will," "wrongful intent to injure another person," or a "wicked or depraved spirit intent on doing wrong." *State v. Fennell*, 340 S.C. 266, 275 n. 2, 531 S.E.2d 512, 517 n. 2 (2000) (defining malice). It is a photograph of six teenagers posing for a picture. To be sure, they are posing in a manner inconsistent with what most people find acceptable, but their posing does nothing to prove that any of them plan to commit an intentional homicide.[7]

On the other hand, the photograph is enormously prejudicial. The photograph depicted, in total, six black teenagers. Two of the individuals in the photograph—those marked as Hickson and "LiQuan," State's Exhibit 43—are seen making signs that could be interpreted as "gang signs."[8] Hickson is holding a bottle of Hennessy, a liquor, and has a firearm in his pocket. *Id.* One of the individuals is showing both middle fingers to the camera. *Id.* Three more of the

---

[7] The solicitor suggested several times that the mere fact that Appellant and Hickson had firearms in their possession was probative of malice or premeditation. If this were correct, the substantial number of South Carolinians who carry firearms daily would be subjecting themselves to prosecution for murder, simply by having firearms. This simply cannot be correct as a matter of law. *Cf., e.g.,* U.S. Const. amend. II (individual right to possess firearms); S.C. Code Ann. § 23-31-245 (open carry of a firearm, without more, does not give a law enforcement officer reasonable suspicion or probable cause to search, detain, or arrest the person carrying).

[8] It is important to note again, however, that the state made no allegation of gang affiliation, and no evidence supports the same.

individuals are simulating brandishing firearms at the camera. *Id.* A photograph of this nature is far more likely to appeal to the jury's emotions or biases than it is to prove anything of value to this case; it is simply a photograph of six teenagers acting in a manner that, while not illegal in any way, is likely to be seen as taboo or unacceptable to people of different backgrounds.[9] In other words, the photograph is highly likely to make Appellant—and the other five boys—look disreputable, or generally menacing to society at large. It would be massively improper for a jury to reach a decision on that basis, which it was substantially likely to do.

In this way, this case is analogous to *State v. King*, 422 S.C. 47, 810 S.E.2d 18 (2017). In that case, the state entered into evidence a fifteen-minute jail phone call, which the state used to establish the defendant's ownership of a cellphone number used to contact a cab company. *Id.* at 68, 810 S.E.2d at 29. However, the phone call was "riddled with profanity, racial slurs, and impermissible references to King's prior bad acts." *Id.* at 69, 810 S.E.2d at 30 (citing *Cheeseboro*, 346 S.C. at 547, 552 S.E.2d at 311 ("Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one") (parenthetical in *King*)). Since a log of the phone calls would have served the same purpose, the Supreme Court found that the trial court erred in admitting the recording of the phone call. *Id.*

The state could only have had one purpose in admitting the photograph at issue here: to scare the jury. This is obvious from the state's closing argument, where it used the photograph at length to evoke imagery of ski mask clad, delinquent teenagers shooting up grocery stores. *See* R. 473-74.[10] And as much as the criminal justice system relies on the opposite presumption,

---

[9] Specifically, white jurors. *See, e.g.,* Anona Su, *A Proposal to Properly Address Implicit Bias in the Jury*, 31 HASTING'S WOMEN'S L. J. 79 (2022).

[10] In the state's closing argument, it used the photograph to describe how frightened the solicitor would be if she walked into a "Food Lion" and saw someone with a ski mask and gun. R. 473-

"verdicts are still rendered by human hands, not the artificial workings of algorithms." *Johnson v. State*, 433 S.C. 550, 559, 860 S.E.2d 696, 701 (Ct. App. 2021). The purpose of Rule 403 is to prevent the jury from being guided by emotion and render judgments based on the facts alone. *Id.* By allowing this enormously prejudicial photo, which proved nothing of consequence, to be shown to the jury, the trial court failed to properly apply Rule 403, SCRE.[11]

Further, the trial court's error here was not harmless. "Error is harmless where it could not reasonably have affected the result of the trial." *State v. McLeod*, 362 S.C. 73, 82, 606 S.E.2d 215, 220 (Ct. App. 2004) (citing, *inter alia*, *In re Harvey*, 355 S.C. 53, 584 S.E.2d 893 (2003)). "An insubstantial error not affecting the result of the trial is harmless where guilt has been conclusively proven by competent evidence *such that no other rational conclusion can be reached.*" *Id.* (citing *State v. Bailey*, 298 S.C. 1, 377 S.E.2d 581 (1989) (emphasis added)). That is not the case here. The state presented no evidence whatsoever explaining a potential motive for the shooting. Further, the state's own evidence conclusively proved that Appellant did not kill the victim. Further still, the jury apparently did not think the evidence of the state's indicted charge—murder—was particularly strong either, as they rendered a verdict of not guilty on that charge. Frankly, the state's evidence was insufficient to convict Appellant of anything. *See infra*, § II. At absolute best, the record shows that the state's case was proven by a razor-thin margin.

---

74. That comparison is in a completely different world from the picture here, which was taken several hours prior to the shooting and in an entirely different location.

11 Further still, the trial court did not explain its ruling. R. 67. It is entirely unclear whether the trial court thought the photograph was probative of malice or premeditation or motive or that Appellant wore green clothes. Evidentiary rulings under Rule 403, SCRE, are committed to the trial court's discretion; but the trial court does not properly exercise that discretion when it fails to conduct the "on-the-record balancing" of probative value and prejudice that is required by the rules of evidence. *See Phillips*, 430 S.C. at 341, 844 S.E.2d at 662; *State v. Hawes*, 411 S.C. 188, 191, 767 S.E.2d 707, 708 (2015) ("A failure to exercise discretion amounts to an abuse of that discretion").

In such a case, an error such as this, which permits the jury to draw negative conclusions about Appellant's character, cannot be harmless beyond a reasonable doubt.

Like the recordings in *King*, the photograph here was not needed to establish that Appellant was at the scene of the shooting or wearing green clothes. Those facts were conclusively established by other evidence, and, in fact, were not contested by Appellant. And the photograph is not probative of malice in any form. For these reasons, the photograph should have been suppressed under Rule 403, SCRE. Because it was not, this Court should reverse Appellant's convictions and sentences and remand this case for a new trial.

II.

The trial court should have granted Appellant's renewed motion for directed verdict.

This case presents the interesting legal question of whether a person can be found guilty of manslaughter on an accomplice liability theory alone. The answer to that question is no, because it is impossible as a matter of law to plan manslaughter in advance. And because the jury was presented with no evidence whatsoever by which they could have reasonably concluded that Appellant confederated with Hickson to commit some *other* unlawful act which could cause the death of another person as a natural consequence, its verdict is erroneous as a matter of law. This Court should reverse.

Accomplice liability is premised on the theory that, generally, "the hand of one is the hand of all." 23 S.C. Jur., *Homicide* § 22.1 (2014). To be guilty as a principal under the theory of accomplice liability, "a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act." *State v. Campbell*, 443 S.C. 182, 193, 904 S.E.2d 441, 446-47 (2024). "One who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." *State v. Condrey*, 349 S.C. 184, 194, 562 S.E.2d 320, 324 (Ct. App. 2002) (citing *State v. Langley*, 334 S.C. 643, 515 S.E.2d 98 (1999)). The "state must present evidence the participant knew of the principal's criminal conduct." *State v. Reid*, 408 S.C. 461, 473, 758 S.E.2d 904, 910 (2014) (citing *State v. Leonard*, 292 S.C. 133, 137, 355 S.E.2d 270, 272 (1987)). Accomplice liability requires proof of "pre-arrangement," which may be proven by either direct or circumstantial evidence. *See State v. Gibson*, 390 S.C. 347, 355, 701 S.E.2d 766, 770 (Ct. App. 2010); *State v. Hill*, 268 S.C. 390, 395-96, 234 S.E.2d 219, 221 (1977) ("presence at the

scene of a crime by pre-arrangement to aid, encourage, or abet in the perpetration of the crime constitutes guilt" as a principal).

Essentially, to prove accomplice liability, the state must do one of two things. It must either prove that two individuals came together for the common purpose of committing a crime, and then did commit that crime, *see, e.g., Campbell*, 443 S.C. at 193, 904 S.E.2d at 446-47, or it must prove that two individuals came together for the common purpose of committing some other crime, but one of them committed an unplanned crime that was a "natural and probable consequence" of the first crime. *See, e.g., Butler v. State*, 435 S.C. 96, 98, 866 S.E.2d 347, 348 (2021); *see also*, *State v. Harry*, 420 S.C. 290, 302, 803 S.E.2d 272, 278 (2017) (Hearn, J., dissenting (the latter method of proving accomplice liability is "most frequently utilized" when "there is...strong circumstantial evidence of a plan to perpetrate an illegal act").[12]

"Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation." *State v. Sims*, 426 S.C. 115, 131, 825 S.E.2d 731, 739 (Ct. App. 2019) (quoting *State v. Sams*, 410 S.C. 303, 309, 764 S.E.2d 511, 514 (2014)). "Both heat of passion and sufficient legal provocation must be present at the time of the killing." *Leggette v. State*, 440 S.C. 590, 602, 892 S.E.2d 153, 160 (Ct. App. 2023) (citing *State v. Starnes*, 388 S.C. 590, 596, 698 S.E.2d 604, 608 (2010)). In other words, the defendant must

---

[12] It is true that Appellant requested the charge on voluntary manslaughter. R. 456. However, that fact does not mean he is precluded from asserting that the jury's verdict in this case is erroneous. Appellant moved for directed verdict and asserted there was no evidence to support accomplice liability. That motion was denied prior to the charge conference. Once that motion was denied, Appellant was entitled to continue to litigate his case within the bounds of the trial court's ruling without waiving the issue he had just argued and preserved. *Cf., State v. Logan*, 394 Md. 378, 390, 906 A.2d 374, 381 (2006) ("The defendant does not waive an error by attempting to minimize or explain improperly admitted evidence...It would be unfair to permit the state to introduce evidence, *albeit* later found to be inadmissible, but not permit the defendant, upon pain of waive, to attempt to meet it, explain it, rebut it or deny it" (emphasis in original)), *overruled on other grounds by Kazadi v. State*, 467 Md. 1, 223 A.3d 554 (2020).

"lose control and create an uncontrollable impulse to do violence." *Starnes*, 388 S.C. at 598, 698 S.E.2d at 608. The courts of this State have followed the common law definition of voluntary manslaughter. 23 S.C. Jur., *Homicide* § 31 (Aug. 2025 update).

Here, there is no evidence that Appellant and Hickson created some advance plan to commit some crime, the natural and probable consequence of which would be the death of another person. In fact, the state did not present evidence of anything that occurred prior to the shooting, and its only witness that could have had prior knowledge of planning between the two testified that no one had any "animosity toward anyone who was shot." R. 115. While the jury may not have believed this testimony, there was no other evidence to support the opposite conclusion. *Cf., Barber v. State*, 393 S.C. 232, 236, 712 S.E.2d 436, 438 (2011) ("a lesser-included offense may not be charged merely on the theory that the jury may believe some of the evidence and disbelieve other evidence"). In short, no evidence was presented of prior planning, and the evidence that *was* presented contradicted that theory.[13] *See, e.g., State v. Thompson*, 374 S.C. 257, 262, 647 S.E.2d 702, 705 (Ct. App. 2007) ("Mere presence and prior knowledge that a crime was going to be committed, without more, is insufficient to constitute guilt.").

The closest the state got was a picture of Appellant, Hickson, and other teenagers, which depicted six different individuals either making "finger guns" at the camera, raising middle fingers, or making other signs. State's Exhibit 42. However, this photograph merely depicts a group of teenagers making immature and ill-advised gestures at a camera and should not have

[13] The state pointed to the fact that Appellant had apparently removed stickers from his vehicle *after* the shooting as evidence of concert between Appellant and Hickson's actions and argued the same in its closing argument. *See, e.g.,* R. 500. This is also insufficient, because "[m]ere presence plus flight has often been held insufficient, the reasoning being that this is equivocal conduct because an innocent man may flee out of a fear of being wrongfully accused of guilt or from an unwillingness to appear as a witness." WAYNE R. LAFAVE, SUBSTANTIVE CRIMINAL LAW § 13.2 (3d ed. 2024).

been admitted in the first place. *See supra* § I. Nothing that Appellant and Hickson are doing in the photograph is unlawful, and nothing in the photograph provides any evidence that the two went to the parking lot intending to kill another person. Nor is there evidence that Appellant and Hickson went to the parking lot to commit any other crime, a "natural and probable consequence" of which would be death. *Butler*, 435 S.C. at 98, 866 S.E.2d at 348. The state did not even attempt to speculate as to what that other crime would have been; rather, it rested on a photograph of six teenagers and the fact that Appellant and Hickson had traveled to the parking lot together. This behavior does not even rise to the level of suspiciousness, much less proof of murder.

Without evidence that Appellant and Hickson pre-planned some *other* criminal offense, the question becomes whether sufficient evidence existed for the jury to conclude that Appellant confederated with Hickson for the express purpose of committing the offense of voluntary manslaughter. Appellant asserts that there was not, because this is impossible as a matter of law.

Again, "voluntary manslaughter is the unlawful killing of a human being in *sudden* heat of passion upon sufficient legal provocation." *Sims*, 426 S.C. at 131, 825 S.E.2d at 739 (emphasis added). The defendant must "lose control and create an uncontrollable impulse to do violence." *Starnes*, 388 S.C. at 598, 698 S.E.2d at 608. Voluntary manslaughter requires that the killing be done briefly after the legal provocation, because if the defendant's "passions had cooled or a sufficiently reasonable time had elapsed so that the passions of the ordinarily reasonable person would have cooled," it is not voluntary manslaughter, it is murder. *State v. Pittman*, 373 S.C. 527, 575, 647 S.E.2d 144, 169 (2007). That brief period can be *very* brief, in *State v. Cole*, for example, the Supreme Court held that a cooling off period of three-to-five

minutes meant there was *no* evidence to support voluntary manslaughter. 338 S.C. 97, 525 S.E.2d 511 (2000).

Necessarily, therefore, the mental state required to commit voluntary manslaughter is specific to an individual person and precludes prior planning by definition. And if that mental state is person-specific and precludes prior planning, a person cannot be an accomplice to voluntary manslaughter—at least not unless the voluntary manslaughter is the result of some other criminal act that the person is an accomplice too.[14] *Cf.*, 1 SIR MATTHEW HALE, THE HISTORY OF THE PLEAS OF THE CROWN 617 (1736) (there cannot be accessory before the fact to manslaughter, because "bare homicide is always sudden," in contrast to murder, which is "premeditated"); *State v. Putman*, 18 S.C. 175, 177, 44 Am. Rep. 569 (1882) ("there can be no accessories before the fact *in manslaughter*" (emphasis in original)); *State v. Burbage*, 51 S.C. 284, 28 S.E. 937 (1898) (the same).[15] And even if there were some plan between Appellant and Hickson, the fact that the jury found Hickson guilty of voluntary manslaughter, rather than murder, means that Hickson "adopt[ed] an entirely different reason for the act" of killing the victim, since the killing was done in the sudden heat of passion. 40 Am. Jur. 2d, *Homicide* § 26

---

[14] Although, in such cases, voluntary manslaughter may not be proper either, as being an accomplice to a crime which could result in a death, and does, makes an accomplice guilty of *murder*, regardless of their own mental state. *See, e.g., Butler*, 435 S.C. at 98, 866 S.E.2d at 348; *People v. McCoy*, 25 Cal.4th 1111, 1119 n. 2, 24 P.3d 1210, 1215 n. 2 (2001) ("an accomplice may not benefit from a principal's heat of passion so as to downgrade his own liability...").

[15] There is, of course, a distinction between accessory before the fact and liability as an accomplice. *See, e.g., Ex parte Carlson*, 186 N.W. 722, 726 (Wis. 1922) ("one who is present aiding and abetting in the commission of a felony may be informed against as a principal and convicted as a principal, although he may have been guilty only of assisting in the commission of the offense"). However, that distinction is irrelevant here, because there is no evidence that Appellant assisted in some *other* offense, the natural and probable consequence of which is the death of another person. *Butler*, 435 S.C. at 98, 866 S.E.2d at 348. In this case, therefore, the proof necessary to prove accomplice liability closely resembles the proof necessary to prove accessory before the fact, with the only difference being whether Appellant was present at the scene. *See Hill*, 268 S.C. at 395-96, 234 S.E.2d at 221.

(2025). This fact alone is sufficient to "terminate" Appellant's liability as an accomplice. *Id.* ("Liability may terminate through the failure of the principal in the first degree to carry out the killing as originally planned and through the adoption of an entirely different reason for the act" (citing, *Owens v. State*, 33 So. 718 (Miss. 1903)).

Instructively, in *Adams v. State*, 65 Ind. 565 (1879), the Indiana Supreme Court addressed the question of whether a person could be guilty of involuntary manslaughter on an accomplice liability theory alone. That court found that there can never "be an aider and abettor in a case of involuntary manslaughter." *Id.* at 574. This is because to be an accomplice, a person necessarily must "be aware of, and consent to" the design or purpose of the crime. *Id.* But, involuntary manslaughter, by definition, is accomplished without design or purpose. *Id.* Simply, "if the perpetrator of the crime had no design or purpose of committing it, it is very certain, we think, that there could be no aider or abettor in such crime." *Id.* The same logic applies here. The jury found that Hickson killed the victim in the sudden heat of passion. Appellant cannot be guilty of aiding and abetting a crime that was done in the sudden heat of passion. According to the jury, Hickson had no design or purpose, he acted in the heat of the moment, without thinking. *See Adams*, 65 Ind. at 575 (quoting *Regina v. Skeet*, 4 Foster & Finlason's Rep. 931 (1866) ("It is the common design or intention to kill...which involves others in the guilt of homicide")). It is not possible as a matter of law, or as a matter of logic, that Appellant was "aware of and consent[ed] to those actions. *Id.* at 574.[16]

---

[16] *Cf.*, 1 HALE, *supra* at 616-17 ("Those offenses, which in the construction of law are sudden and unpremeditated; cannot have any accessories before, as killing a man *per infortunium, se defendeno*, or manslaughter. And therefore, if A be indicted or murder, and B as accessory before, if the jury find A guilty only of manslaughter, there shall be no inquiry of B" (changed to American English spelling)).

In this record, there is no direct, nor substantial circumstantial evidence of prior planning by Appellant. For these reasons, the trial court erred in refusing to direct a verdict of acquittal. Appellant's convictions and sentences should be vacated.

III.

The trial court's supplementary instruction in response to a jury question was ambiguous and prejudiced Appellant.

The trial court's response to the jury's note did not adequately address the jury's clear confusion on the law of accomplice liability. Rather, it gave an ambiguous reply that is reasonably likely to have convinced the jury that it was required to impute all Hickson's acts onto Appellant, even if the state had not proven the elements of accomplice liability, a result that violates the constitutional guarantees of due process and trial by a jury. For these reasons, this case should be reversed and remanded for a new trial.

When reviewing an ambiguous jury instruction, the case should be reversed if there is a reasonable likelihood that the jury applied the instruction in a way that violates the Constitution. *Aleksey*, 343 S.C. at 27, 538 S.E.2d at 251. The reasonable likelihood standard is essentially the same as the harmless error standard; unless it can be shown that the jury did not apply the instruction in a way that violates the constitution beyond a reasonable doubt, the conviction should be reversed. *See Lowry v. State*, 376 S.C. 499, 510-11, 657 S.E.2d 760, 766 (2008) ("Because the unconstitutional jury instruction did not constitute harmless error in Petitioner's murder conviction, we find that there is a reasonable probability that, but for counsel's failure to object to the unconstitutional jury instruction, the outcome of the trial would have been different"). The Due Process Clauses of the Fifth and Fourteenth Amendments, and Article I, § 3 of the South Carolina Constitution, do not permit an accused to be convicted of a crime unless the state proves each and every element of that crime beyond a reasonable doubt. *Lowry,* 376 S.C. at 505 & n. 2, 657 S.E.2d at 763 & n. 2; *accord, In re Winship*, 397 U.S. 358, 364 (1970). "This principle prohibits the use of evidentiary presumptions in a jury charge that have the effect

of relieving the state of its burden of proof beyond a reasonable doubt as to every essential element of the crime." *Id.* (citing *Sandstrom v. Montana*, 442 U.S. 510 (1979)). A jury instruction is violative of the Due Process Clauses of the federal and state constitutions if "it is reasonably likely that the jury understood the charge to create a mandatory presumption requiring it to infer an element of the offense if the State proved certain predicate facts, thereby relieving the State's burden of proof on an element of the offense." *Id.* (citing *Francis v. Franklin*, 471 U.S. 307, 314 (1985)). Further, it is not enough that that the supplemental jury charge can be viewed in conjunction with a different, correct charge, a charge "that merely contradicts and does not explain a constitutionally infirm instruction will not suffice to absolve the infirmity." *Francis*, 471 U.S. at 322. And a supplemental instruction in response to a request by the jury should be given special attention by this Court, because there is a presumption that the jury would have given "special attention" to the supplemental charge. *State v. Blassingame*, 271 S.C. 44, 47, 244 S.E.2d 528, 530 (1978).

Here, the subject matter of this case already involved an abnormally complex area of law in accomplice liability. Lay jurors cannot be expected to understand the innerworkings of accomplice liability without clear and unambiguous instruction by the trial court.[17] And in this case especially, the jury's question to the trial court evidences their lack of understanding to an even greater extent.[18]

---

[17] It is not just laymen who experience "considerable difficultly" understanding the proper application of accomplice liability, courts too have experienced "considerable difficultly" in making jury charge decisions in accomplice liability cases. *See* LAFAVE, *supra* at § 13.2.

[18] Further evidencing this lack of understanding, the jury returned a legally incomprehensible verdict. *See supra* § II. Neither the state nor the trial court appeared to believe there was any evidence by which to charge voluntary manslaughter. R. 459 (MS. LIVESAY: "...I don't think it's appropriate, but in transparency with the court, I feel like the trend from the appellate court seems to be, if the defense asks for it, look for a reason to read it." THE COURT: "All right. I

There are several ways to interpret the jury's question, "Is hand of one, hand of all law that has to be followed?" R. 545, 569 (Court's Exhibit 1). The jury may, as the trial court seemed to suggest, that the jury was asking whether it was entitled to nullify. R. 547 ("I don't know…whether they have the option to choose it or not choose it"). The jury may want the trial court to weigh in on whether the state has proven accomplice liability. R. 547 ("I don't know whether they're asking for me to comment on the evidence…").

However, the jury could also have been asking whether it was *required* to find both defendants guilty if it found one of them guilty. This presents a much more menacing question, because in this case, there was evidence to suggest that Hickson shot and killed the victim, but very little evidence that Appellant had planned to join him in so doing. To the extent that this is what the jury meant, this would mean the jury understood the proof of some predicate facts to require a mandatory presumption of others, violating due process. *Francis*, 471 U.S. at 314. In that case, the trial court telling the jury that it must follow the law that it was already instructed would essentially amount to—in the minds of confused jurors—an endorsement of this presumption by the trial court.

In any event, the trial court's instruction that the jury "must follow the law as it was charged…by the court," cannot have been particularly clarifying. The jury was already confused about the "law as it was charged by the court;" otherwise, it would not have asked the question.[19]

---

think you're right on that."). And, while Appellant is barred by the invited error doctrine from arguing the charging of voluntary manslaughter was unwarranted, it does appear from the record that there was scant evidence of provocation or heat of passion. All of this further supports the fact that the jury did not understand the law on accomplice liability, and the trial court's instruction made that confusion worse rather than better.

[19] What is particularly puzzling about the trial court's supplementary instruction is that the instruction that it proposed in response to Appellant's original objection, "yes, if the state proves it beyond a reasonable doubt," R. 549, would have been a far clearer response to the jury's

And when a jury expresses confusion, other courts have determined that it is reversible error to fail to respond to attempt to remove that confusion. *United States v. Bolden*, 514 F.2d 1301, 1308 (D.C. Cir. 1975) ("when a jury shows confusion, a trial judge is under an obligation to respond"). "Particularly where a difficult legal issue...is the subject of the jury's inquiry, the trial court should carefully inform the jury of the law and not allow the troubled jury to rely on a layman's interpretation of a superficially simple but actually complex [issue]." *Id.* at 1309 (citing, *inter alia*, *Bland v. United States*, 299 F.2d 105, 109 (5th Cir. 1962)). Where "the jury ha[s] difficulty with" a charge, "there was evidence to support the defense theory," and the jury received an instruction "which did not provide them with the legal information they themselves indicated that they needed," the trial court commits reversible error. *Id.*

Accomplice liability is an enormously complex area of the law. *See* LAFAVE, *supra* at § 13.2. In this case, the jury was confused by it, asked for help, and received nothing helpful in response. "The fact that the jury returned a verdict...does not mean that it resolved the question correctly." *Potter v. United States*, 534 A.2d 943, 946 (D.C. 1987). "The provision of an answer to a jury note that is adequate to dispel jury confusion on a controlling issue of a case is...an important aspect of due process..." *Id.*

For these reasons, the supplemental instruction given by the trial court in response to the jury's question was error. Further, due to the several potential ways that the jury interpreted the

---

question, which likely would have resolved all the problems addressed herein. However, the trial court apparently believed that the jury would take that as him commenting on the facts. R. 548. It is not clear why the trial court believed that "yes, if the state proves it" could be understood as a belief that the trial court believed that the state "proved it." It less clear how this problem was solved by stating "you must follow the law as it was charged to you *by the Court*," R. 549 (emphasis added), as it would seem the addition of "by the Court" would be more likely to imply that the Court's endorsement is behind the message. *Cf., State v. Burdette*, 427 S.C. 490, 503, 832 S.E.2d 575, 583 (2019) ("It is axiomatic that some matters appropriate for jury argument are not proper for charging. 'Do jurors need the court's permission to infer something? The answer is, of course not.'" (citations omitted)).

trial court's response, the confusion apparent from its first note, the fact that this was already a close case without overwhelming evidence in either direction, and the strange verdict that it reached, it cannot be said "beyond a reasonable doubt" that this error had no impact on the verdict. *See Chapman v. California*, 386 U.S. 18, 24 (1967) (federal constitutional errors may only be held harmless if they are "harmless beyond a reasonable doubt"); *Lowry*, 376 S.C. at 510-11, 657 S.E.2d at 766 (the same).

Accordingly, Appellant's convictions and sentences must be reversed, and this case remanded for a new trial.

CONCLUSION

For the foregoing reasons, Appellant's convictions and sentences should be vacated. In the alternative, this Court should reverse and remand for a new trial.

W. Chandler Norville
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of January, 2026.

CERTIFICATE OF COUNSEL

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

This 5th day of January, 2026.

W. Chandler Norville
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT