STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
J. Mark Hayes, Jr., Circuit Court Judge

Appellate Case No. 2025-000568

The State, ...Respondent,

v.

Jermaine Culver, ...Appellant.

INITIAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

1. Whether the trial court properly charged the jury on accomplice liability and the theory of "the hand of one is the hand of all" where the evidence presented at trial supported the charge. Furthermore, whether any possible error was harmless in this case where, beyond a reasonable doubt, it did not contribute to the jury's verdict because the overwhelming evidence proved Appellant was the principal actor in the armed robbery for which he was convicted.

STATEMENT OF THE CASE

Jermaine Culver (Appellant) was indicted at the September 2024 term of the grand jury for Spartanburg County for murder (2024-GS-42-4172) and armed robbery (2024-GS-42-4171). He was represented by J. Zachary Farr, Esquire, of the Spartanburg County Bar. Respondent (the State) was represented by Senior Assistant Solicitor William G. Rhoden of the Seventh Circuit Solicitor's Office. On March 10-13, 2025, the case proceeded to trial before the Honorable J. Mark Hayes, Jr., and a jury. At the conclusion of trial, the jury found Appellant guilty of armed robbery but was unable to reach a verdict on the murder charge. Judge Hayes declared a mistrial on the murder charge and sentenced Appellant to thirty years' imprisonment for armed robbery. (Tr.p.1; p.400-p.408; Indictment & Sentence Order). Appellant timely filed a notice of intent to appeal and a brief in support of his appeal was filed by Chief Appellate Defender Wanda H. Carter of the South Carolina Commission on Indigent Defense. This Brief of Respondent now follows.

STATEMENT OF FACTS

On March 10, 2025, the trial court conducted voir dire and the parties selected a jury. (Tr.p.1-p.72). The following day, the jury was sworn, the trial court gave preliminary instructions, and the trial began. (Tr.p73-p.84). The State and Appellant made opening statements. The solicitor explained that the charges against Appellant stemmed from an incident that occurred a little after midnight on March 12, 2022, in the parking lot of a Valero gas station/convenience store on Bryant Road in Spartanburg County. Jarqueze Williams (Victim) was driving to his cousin Tyrone Carter's residence to have pizza when he stopped his Kia at the Valero convenience store. Victim parked his Kia in front of the store, in view of several security

cameras, and left his keys in the ignition while he went inside to purchase an energy drink. Security cameras show Victim talking to the store clerk when he suddenly drops his items and runs out of the store because he sees his car leaving the parking lot. Victim attempts to open the front passenger door; however, he abruptly turns around and reenters the store after he is shot. The store clerk called 911 and Victim was taken to the hospital; however, he ultimately died from his injuries thirteen days later. (Tr.p.84-p.88). The solicitor said the case was about "who shot [Victim]" and "who stole [Victim's] car," claiming the evidence would show it was Appellant and Antoin Bobo, acting together. He explained that in addition to the video recordings from the security cameras, the State would be presenting other evidence linking Appellant and Bobo to the crimes, including DNA evidence. (Tr.p.88-p.89).

In Appellant's open, counsel simply asked the jurors to remember the State's claim that Appellant and Bobo were acting together and were somehow linked, noting this would make Bobo the State's most important witness.[1] He further argued some witnesses would not be credible, that the State's case was not very strong, and that Appellant was innocent of the entire case. (Tr.p.89-p.90).

After opening statements, the State presented its case-in-chief, calling a series of police officers, foundational and fact witnesses, chain of custody witnesses, and medical personnel to describe the incident, the ensuing investigation, Victim's injuries and eventual death, and the evidence linking Appellant and Bobo to the crimes. At the outset, after entering: (1) a recording of the store clerk's 911 call through Spartanburg County 911 records custodian Justin Martin (Tr.p.91-p.93): (2) Verizon cell phone tower records through Verizon Senior Analyst Daniel

[1] Counsel apparently asked the jurors to focus on Bobo and his potential testimony, or the lack thereof, knowing it was highly unlikely the State would call him as a witness at trial and therefore would undermine the State's case. Counsel continued to pursue this strategy in his closing argument by noting the State's failure to present Bobo as a witness. (Tr.p.369-p.270).

Reed (Tr.p.94-p.98); and (3) Charter Communications cell phone subscriber records through Charter's Field Operations Manager Robert Camara (Tr.p.98-p.103); the State called Cierra Hawkins of GPM Investments, to the stand. She explained that GPM owns the Scotchman and Lil' Cricket convenience stores in Spartanburg that carry Valero gasoline. Hawkins authenticated the security camera video recordings from the night of the incident and a four-part redacted copy of those recordings was admitted into evidence, without objection, as State's Exhibit 4-A. (Tr.p.103-p.106; State's Exhibit 4-A: (1) "Dumbster [sic]," (2) "Register No. 2," (3) "Sidewalk Left," and (4) "Sidewalk Right.").

Next, the State called Kenneth Erwin, the Valero/Scotchman store clerk, to the stand. He described the incident and used the videos to narrate what was recorded. (Tr.p.106-p.119; p.123-p.124; State's Exhibit 4-A). The videos were also used by the State's final trial witness, Spartanburg County Sheriff's Office (SCSO) lead detective Kenneth Hammitt, who gave a detailed account of the recordings and identified several still shot photos from the videos which were admitted without objection. (Tr.p.308-p.318).

As described in the two accounts and as captured in the recordings themselves, the videos show two individuals approach the store by foot. One man, later identified by DNA evidence as Antoin Bobo, is dressed in a hoodie, and a second man, later identified by DNA evidence as Appellant, is dressed in a beanie cap and white Crocs. (Tr.p.310-p.312; State's Exhibit 4-A). On the "Sidewalk Left" footage, Appellant and Bobo can be seen in the far-right corner of the frame entering the parking lot together. They walk past the front of the store, providing a clear image of both men in what appear to be ski masks, with only their eyes visible. Although their mouths are covered, from their movements Appellant and Bobo appear to be speaking to one another as they

walk past Victim's car and then exit the camera view. (State's 4-A - 18:05 to 18:44; Sidewalk Left - 1:28 to 2:07).

On the Dumpster footage, Appellant and Bobo walk together towards the woods before exiting the frame. (State's 4-A - 18:45 to 19:07; Dumpster - 0:10 to 0:32). They remain out of frame for approximately one and a half minutes, then walk back into frame together. When Appellant and Bobo reach the parking lot, both men simultaneously break into a run and disappear out of frame. (State's 4-A - 20:29 to 20:37; Dumpster - 1:54 to 2:02).

Appellant's and Bobo's movements are picked back up on the "Sidewalk Right" camera, which shows them sprinting towards Victim's car. When Appellant and Bobo reach Victim's car, Appellant gets into the driver's seat and Bobo gets into the rear driver's-side seat. Appellant backs Victim's car out of the parking spot and starts to drive away when Victim runs out of the convenience store and attempts to open the front passenger-side door. Victim manages to open the car door, but jumps back seconds later, having just been shot. Appellant drives Victim's car out of the parking lot, turning left on the road and driving out of frame as Victim reenters the convenience store to seek help. (State's 4-A - 20:34 to 21:03; Sidewalk Right - 4:19 to 4:48). It is not evident from the surveillance footage who fired the shot. (Tr. 318:1-12).

After Victim returned to the convenience store, Erwin called 911. (Tr.p.318, lines 9-21; p.118, lines 4-7). Victim suffered a single bullet wound, with the bullet entering through his left abdomen and exiting through the right back-side of his body. Dr. Clair Rose, the State's medical examiner, testified that the angle of the shot caused damage to Appellant's colon, pancreas, small intestine, and liver. (Tr.p.187-p.189). Victim died from complications caused by his injuries, thirteen days later. (Tr.p.88).

SCSO Deputy Herschal Lee Phillips testified that he responded to the initial scene and submitted a stolen vehicle report for Victim's car. (Tr.p.137- p.138). The vehicle was located later that same day by SCSO Deputy Eduardo Chaves, who responded to a call around 7 P.M. about a suspicious abandoned vehicle that came back as stolen when he ran the license plate. (Tr.p.140-p.141). Through a series of chain-of-custody and fact witnesses, including SCSO Deputy Herschal Lee Phillips, SCSO Deputy Eduardo Chavez, SCSO Deputy Steven Phillips, SCSO Sergeant Michael Nix, Tyronne Carter, and Ashonda Nesbitt, that abandoned vehicle was confirmed to be the same Kia that was stolen from Victim in the Valero parking lot. (Tr.p.125-p.145).

Sergeant Nix worked in the forensics unit and processed the stolen car, taking photos and DNA swabs from various locations. (Tr.p.149-p.157). Before Nix began testifying about a comparison DNA swab he took from Bobo, the jury was sent out and Appellant made an objection. (Tr.p.158). He argued that where Bobo was not on trial it was improper testimony because the State had not laid a foundation. The solicitor responded by explaining that all the evidence, including the DNA matching Bobo to the hoodie seen on the video and found in the stolen car, constituted pieces of a puzzle that would link Bobo and Appellant to the crimes under the State's accomplice liability theory of the case. The trial court allowed the testimony, finding the probative value outweighed the prejudicial effect and that the State was going to lay a foundation of relevancy with subsequent testimony. (Tr.p.158-p.161). When the testimony about Bobo's buccal swab was elicited in front of the jury, Appellant renewed his objection and it was overruled. (Tr.p.164, lines 6-11).

Inside the Kia, investigators found a grey hoodie and a nine-millimeter shell casing in the backseat. (Tr.p.170, lines 22-25; p.179, lines 11-23). Timothy Nefzinger, Jr., the DNA

Technical Leader at the Greenville County Department of Public Safety DNA lab was admitted as an expert in DNA testing and analysis. He explained DNA testing procedures and described the tests he conducted on the DNA swabs taken from the stolen car. His written report was admitted into evidence without objection. (Tr.p.290-p.293). Nafzinger opined the DNA mixture on the steering wheel was 67.9 octillion times more likely to have come from Appellant than a random, unrelated person, and the DNA mixture on the gear shift was 386 trillion times more likely to have come from Appellant than a random, unrelated person. He further opined the DNA mixture on the hoodie was 3.49 octillion times more likely to have come from Bobo than a random, unrelated person. (Tr.p.297-p.302). In other words, the DNA testing on the hoodie returned as a match for Bobo and the DNA testing on the Kia's steering wheel and gear shift returned as a match for Appellant. (Tr.p.297-p.299).[2]

Alongside forensic evidence, the State offered cellular data showing Appellant and Bobo's movements immediately following the robbery. SCSO Sergeant Brandon Letterman was admitted as an expert in cell phone data and cell phone location analysis. (Tr.p.235). He testified that data from Bobo's phone—which had location services turned on—placed him in the Valero parking lot at the time of the crimes. (Tr.p.243-p.244). Letterman explained that at 12:22 A.M., Bobo's phone pinged on Highway 221, and at 12:27 A.M. the phone data placed him in the vicinity of where the stolen car was eventually found. (Tr.p.244-p.247). Sergeant Letterman also testified about cell phone tower sector data from Appellant's phone, which pinged in the same service sector as Bobo's phone shortly after the crimes. (Tr.p.247).

[2] The State called Deputy Steven Phillips, Sergeant Nix, Deputy Akilah Jefferson, Sergeant Marilyn Roman, Lieutenant Paul Norris, Deputy Kenneth Hammit, Kara Bennick, Hannah Burbage, and Nafziger to provide chain-of-custody and fact testimony regarding evidence collected from inside the car. (Tr. 154-302).

Sergeant Letterman went on to testify that from 12:34 A.M. onwards, Appellants phone made five separate calls or attempted calls to a phone number later identified to belong to Bobo's mother. (Tr.p.277-p.249).[3] The State also successfully admitted Appellant's video interview wherein he acknowledged knowing Bobo, whom he refers to as "Kie." (Tr.p.273, lines 2-3) (State's Exhibit 27). Deputy Kenneth Hammit of the Spartanburg County Sherriff's Office testified that "Kie" was a nickname for Antoin Bobo. (Tr.p.267, lines 19-21).

At the conclusion of Detective Hammitt's testimony, the State rested. (Tr.p.333). Appellant moved for directed verdict as to all charges, arguing the State had failed to produce circumstantial evidence of a plan or scheme to commit an unlawful act that could foreseeably result in homicide. He further argued there had been no evidence of a discussion of a plan or any evidence that one of the two individuals knew anyone had a gun, so there was insufficient evidence of accomplice liability for the case to go to the jury. (Tr.p.334-p.335).

The State responded that it had presented a plethora of evidence against Appellant, making it inescapable but to conclude that he and Bobo were acting together, hand-in-hand, after formulating a plan to steal Victim's car. The solicitor pointed to the video recordings, the DNA evidence, and the cell phone evidence as ample evidence of accomplice liability for both crimes, or that Appellant was, in fact, the shooter. (Tr.p.336-p.337). The trial court denied the directed verdict motion. (Tr.p.337-p.338). After advising the Appellant on the record regarding his right to testify, Appellant elected not to testify or present a defense and instead rested. (Tr.p.339-p.347).

[3] The State had previously called Reed, Camara, Sergeant Jason Krammer, James Britt, Sergeant Letterman and Nikki Creal to authenticate and admit relevant phone and service provider data. (Tr. 95:14-100:19, 222:13-258:15).

Closing Arguments, Jury Charge, and Verdict

At the end of the third day of trial, the court held a charge conference in chambers. It allowed the parties to place their objections and arguments on the record the following morning. (Tr.p.342-p.346). Just before closing statements, Appellant made an on-the-record objection to the State's request to instruct the jury on the accomplice liability theory of the hand of one is the hand of all. (Tr.p.345, lines 1-8). Counsel referred back to arguments made during his directed verdict motion, stating:

> I still don't think the State has proved enough in this case to say my client, two or more people in this case, and he was acting in this case. . . I don't think the jury charge is correct, Your honor, since my client is the only one being charged. The other Defendant hasn't testified.

(Tr.p.345, lines 9-14). The trial court overruled Appellant's objection, finding "I believe the State has presented sufficient evidence in this case to warrant an instruction of hand of one, hand of all." (Tr.p.346, lines 13-18).

After Appellant rested, the parties made closing arguments. The State's argument focused on the doctrine of the hand of one is the hand of all, with the solicitor contending there was abundant circumstantial evidence that Appellant and Bobo had a mutual plan to act together to steal Victim's car, a plan that involved a gun and resulted in Victim's murder. (Tr.p.347-p.354). The State highlighted the video evidence and the DNA evidence to support accomplice liability, arguing it proved Appellant and Bobo were at least equally responsible for both crimes. (Tr.p.354-p.361).

In contrast, Appellant sought to undermine the State's accomplice liability theory, noting there was no evidence of Appellant and Bobo talking about a plan or a prior arrangement to commit an armed robbery or a murder. He attacked various weaknesses in the police

investigation and the lack of witnesses, particularly highlighting the State's failure to put Bobo on the stand before asking the jury to find Appellant not guilty on both charges. (Tr.p.361-p.370).

The trial judge then charged the jury on the two separate and distinct charges; the burden of proof; the presumption of innocence; reasonable doubt; the roles of the judge and the jury; direct and circumstantial evidence; credibility of witnesses; Appellant's right not to testify; expert witnesses; accomplice liability; mere presence; criminal intent; the elements of each offense; and the verdict forms. (Tr.p.370-p.383). In regard to the accomplice liability, the trial court charged the jury as follows:

> Ladies and gentlemen, if a crime is committed by two or more people who are acting together in committing a crime, the act of one is the act of all. A person who joins with another to commit an unlawful act is criminally responsible for everything done by the other person which, happens as a probable or natural consequence of the acts done in carrying out the common plan or purpose.
>
> If two or more people are together, acting together, assisting each other in committing the offense, the act of one is the act of all or, as sometimes said, the hand of one is the hand of all.
>
> Prior knowledge that a crime is going to be committed, without more, is not sufficient to make a person guilty of the crime. Mere knowledge that another person is going to commit a crime, even if the Defendant is present when the crime is committed, it's not sufficient to convict the Defendant as a principal. Guilt as a principal is shown by actual or constructive presence at the scene as a result of prior arrangement.
>
> Therefore, a finding of a prior arranged plan or common scheme is necessary for a finding of guilt as a principal. The State must prove beyond a reasonable doubt by competent evidence the theory of the hand of one is the hand of all.
>
> A principal in a crime is one who either actually commits the crime or who is present, abetting, aiding, or assisting in

> committing the crime. When a person does an act in the presence of and with the assistance of another, the act is done by both.
>
> When two or more are acting with a common plan or intent or present at the commission of a crime, it does not matter who actually commits the crime. All are guilty. The hand of one is the hand of all.

(Tr.p.377, line 13-p.378, line 20). At the end of the jury charge, Appellant renewed his objection to the charge on the hand of one is the hand of all. (Tr.p.383, lines 11-18).

The jury began deliberating but then sent the trial judge several notes about the evidence and the jury charges, including a request for a printout or clarification of the law on the hand of one, hand of all. The trial court proposed simply recharging on accomplice liability, and the parties consented to the proposal. (Tr.p.384-p.392). The trial court then recharged the law of accomplice liability including the hand of one is the hand of all. (Tr.p.393-p.395).

After deliberating for approximately three hours, the jury found Appellant guilty of armed robbery but was unable to reach a verdict on the murder charge. Judge Hayes declared a mistrial on the murder charge and sentenced Appellant to thirty years' imprisonment for armed robbery. (Tr.p.1; p.398-p.408; Indictment & Sentence Order).

STANDARD OF REVIEW

In criminal cases, an appellate court sits to review only errors of law, and it is bound by the trial court's factual findings unless they are clearly erroneous. *State v. Brown*, 401 S.C. 82, 87, 736 S.E.2d 263, 265 (2012); *State v. Wharton*, 381 S.C. 209, 213, 672 S.E.2d 786, 788 (2009). "The evidence presented at trial determines the law to be charged to the jury." *State v. Gilliland*, 402 S.C. 389, 400, 741 S.E.2d 521, 527 (Ct. App. 2012). On appeal, an appellate court reviewing a trial judge's jury charge must view the charge as a whole and in light of the

evidence and issues presented at trial. *State v. Dent*, 440 S.C. 449, 453, 892 S.E.2d 294, 296 (2023); *State v. Simmons*, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009); *see Todd v. State*, 355 S.C. 396, 402, 585 S.E.2d 305, 308 (2003) ("[J]ury charges should be examined in their entirety and not in isolation[.]"). The appellate court will only reverse a trial judge's decision regarding jury instructions when that decision constituted a prejudicial abuse of discretion. *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000); *Rauch v. Zayas*, 284 S.C. 594, 597, 327 S.E.2d 377, 378 (Ct. App. 1985).

An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. *Brown* at 87, 736 S.E.2d at 265; *State v. Jennings*, 394 S.C. 473, 477-78, 716 S.E.2d 91, 93 (2011); *State v. Morris*, 376 S.C. 189, 205-06, 656 S.E.2d 359, 368 (2008). If the jury instructions presented were substantially correct and covered the applicable law, the trial judge's decision will not be reversed on appeal. *State v. Marin*, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016); *State v. Ezell*, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct. App. 1996). Indeed, the substance of the law is what must be charged to the jury. *Marin*, 415 S.C. at 482, 783 S.E.2d at 812-13. If there is any evidence to support the requested charge, the trial court should grant the request. *State v. Williams,* 367 S.C. 192, 195, 624 S.E.2d 443, 445 (Ct. App. 2005).

ARGUMENT

I.

The trial court properly charged the jury on accomplice liability and the theory of "the hand of one is the hand of all" because the evidence presented at trial supported the charge. In any event, any possible error was harmless in this case because, beyond a reasonable doubt, it did not contribute to the jury's verdict where the overwhelming evidence proved Appellant was the principal actor in the armed robbery for which he was convicted.

Appellant argues the trial court abused its discretion by charging the jury on the law of accomplice liability. He contends the facts of the case did not support the charge, and that the resulting prejudicial impact of the instruction unfairly bolstered the State's case against him. Specifically, Appellant points to the jury's failure to reach a verdict on the murder charge despite convicting him on the armed robbery charge as proof of the instruction's prejudicial impact. (Brief of Appellant, p.4-p.7).

To the contrary, the State presented substantial evidence to support an accomplice liability charge on the hand of one hand is the hand of all on both murder and armed robbery because the evidence was well over the threshold of "any evidence" required to warrant the jury instruction requested. First, the State presented DNA evidence proving both Appellant and codefendant Antoine Bobo were actually present at the scene of the crimes, including DNA collected from the stolen vehicle's steering wheel and gear shift tending to prove that Appellant himself drove off with the stolen car, and DNA from the hoodie tending to prove that Bobo got in the back seat during the robbery. Likewise, the State offered security video evidence showing two individuals acting in concert at the scene of the crime, where circumstantial evidence, particularly the pair's conduct before and during the crimes, permitted an inference of pre-arrangement and planning. Moreover, cell phone data from both Appellant and Bobo's phones

demonstrated that they traveled together, in the stolen car, to the site where it was dumped and then stayed there together for over thirty minutes.

Furthermore, because there was no evidence proving whether Appellant or Bobo fired the fatal shot, the accomplice liability instruction was proper for both the armed robbery and murder charges and could not have unfairly prejudiced Appellant. Accordingly, because there was evidence that Appellant and Bobo acted together as part of a common plan and purpose to steal Victim's vehicle, that Appellant was present at the scene and an active participant in executing that plan, and Victim was killed during the execution of that plan, the trial court did not abuse its discretion in finding there was evidence to support a hand of one hand of all jury instruction. Appellant's conviction should be affirmed.

Law / Analysis

"The doctrine of accomplice liability arises from the theory that the hand of one is the hand of all." *State v. Reid,* 408 S.C. 461, 472, 758 S.E.2d 904, 910 (2014) (internal quotations omitted). "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." *Id.* Accomplice liability can be proven by circumstantial evidence. *State v. Campbell*, 443 S.C. 182, 193, 904 S.E.2d 441, 446 (2024). "Under an accomplice liability theory, '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. Condrey,* 349 S.C. 184, 194, 562 S.E.2d 320, 325 (Ct. App. 2002) (quoting *State v. Langley,* 334 S.C. 643, 648-49, 515 S.E.2d 98, 101 (1999)). Moreover, one combining with others to accomplish an illegal purpose is criminally liable for everything done by either him or his confederates in the execution of that common

design, even that which is not intended as part of the original design or common plan but which is a probable and natural consequence of such. *State v. Harry*, 413 S.C. 534, 540, 776 S.E.2d 387, 391 (Ct. App. 2015), *aff'd*, 420 S.C. 290, 803 S.E.2d 272 (2017) (quotations omitted).

"In order to establish the parties agreed to achieve an illegal purpose, thereby establishing presence by pre-arrangement, the State need not prove a formal expressed agreement, but rather can prove the same by circumstantial evidence and the conduct of the parties." *State v. Gibson*, 390 S.C. 347, 354, 701 S.E.2d 766, 770 (Ct. App. 2010) (citing *Condrey,* 349 S.C. at 193, 562 S.E.2d at 324).

Under South Carolina law, the State was not required to show that Appellant and Bobo had an express agreement in order for the court to properly charge the jury with a hand of one hand of all instruction. Instead, the State merely had to demonstrate that "circumstantial evidence and the conduct of the parties," tended to show an implicit agreement. *Gibson*, 390 at 354, 701 at 770 (citation omitted). Here, the State presented ample circumstantial evidence to make the question of accomplice liability a jury issue.

Appellant does not seem to contest that he was the individual who got into the front seat of Victim's car. Further, Appellant seems to acknowledge that the man who arrived with him and got into the backseat of the car at the same time was Bobo. Appellant's point of contention is that, because the evidence showed "two separate decisions made by two separate individuals to enter a vehicle," it "did not constitute sufficient evidence of accomplice liability between Appellant and Bobo." He contends the State presented "insufficient circumstantial evidence establishing a meeting of the minds between two men, or some pre-arrangement by the two men, or some common design by the two men to commit armed robbery." Appellant claims that at best, these were coincidental actions or activities wherein two men acted independently. (Brief of

Appellant, p.6). To the contrary, the State presented ample circumstantial evidence of a common design, far beyond the low bar of "any evidence" required to justify a jury charge. The evidence is best understood in three phases: before the crime, during the crime, and after the crime.

1. Before the Crime

First, there was circumstantial evidence that Appellant and Bobo had designs to commit a criminal act prior to arriving at the convenience store. The State presented Appellant's statements that he and Bobo were friends, and the two can be seen on security footage walking together towards the gas station. Despite the fact that it was mid-March in South Carolina, both men are wearing matching ski masks in what appears to be an attempt to hide their features. Moreover, their conduct before the crime is highly indicative of a common scheme. The men walk together, appear to be speaking to one another, and disappear into the woods for a minute and a half before they re-appear and immediately begin to sprint for the car. Like the defendants who arrived and fled together in *State v. Johnson*, Appellant's and Bobo's joint arrival—in ski masks—further supports the inference of a mutual plan. 444 S.C. 442, 451, 908 S.E.2d 102, 106 (2024). Similar to our Supreme Court's analysis in *Johnson*, which found that co-defendants sitting in a car together for two minutes prior to carrying out a murder was "plenty of time to finalize their plan," the minute and a half Appellant and Bobo spent in the woods before immediately running for Victim's car supports a similar inference of a plan.

2. During the Crime

Appellant's and Bobo's actions during the crime provided further evidence that they were working pursuant to a common plan to accomplish an illegal purpose. Their simultaneous running, Appellant getting into the front seat while Bobo got into the backseat without any further conversation, and Appellant immediately driving away, all constitute circumstantial

evidence that by that point the men were executing a previously formed plan to steal Victim's car. *See State v. Burdette*, 427 S.C. 490, 502, 832 S.E.2d 575, 582 (2019) (holding that "the remarkable fact that two different individuals [one of whom was [the defendant]] were seen fleeing the same crime while carrying rifles, at the precise moment following a massive shooting committed by rifle fire, is undeniable circumstantial evidence" of two people acting as accomplices).

3. After the Crime

Finally, Appellant's and Bobo's conduct following the crime, as demonstrated through their cell phone data, is further evidence of a common scheme. Appellant's and Bobo's phones contained data placing them in the location where the stolen car was found abandoned, and then stayed in that location for roughly thirty minutes after the crime. While there Appellant's phone was used to repeatedly dial Bobo's mother, with four outgoing calls and one incoming call happening in the span of twenty minutes. This is exactly the kind of circumstantial evidence that would support an inference by the jury that Appellant and Bobo coordinated with one another after the crime to try and determine their next steps. *See State v. Whitaker*, 200 N.J. 444, 464-65, 983 A.2d 181, 193 (2009) (holding that there was sufficient direct and circumstantial evidence to find the defendant guilty of murder via accomplice liability theory when defendant and co-defendant/shooter were together during the incident, defendant told police he knew co-defendant intended to rob someone that night, and a witness heard defendant instructing co-defendant to hide the murder weapon as they fled the scene).

To prove armed robbery, the State was required to prove Appellant committed a robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon. S.C. Code Ann. § 16-11-330 (2022). Here, there was compelling evidence that: (1) Appellant was

present at the scene of the crimes; (2) Appellant entered Victim's car and drove it away without Victim's consent; and (3) Victim was shot by one of the two car thieves during the armed robbery. Appellant was strongly identified via DNA evidence and video surveillance as the individual who entered and drove away with Victim's car. Accordingly, the only element of the charge potentially affected by the accomplice liability instruction was that Appellant committed the robbery "while armed." Because Victim was shot attempting to stop the theft, it is uncontested that one of the defendants had a gun. *See Taylor v. State*, 2017 Ark. App. 331, 9, 522 S.W.3d 844, 851 (2017) (noting that undisputed evidence that victim was shot in the arm was evidence that a deadly weapon was used in the course of a battery).

Therefore, the only two possible conclusions are that: (1) Appellant had the gun and shot the victim as he was driving away, making Appellant the principal, or (2) Bobo had the gun and shot the victim while Appellant drove the car away, making Appellant liable as a principal under hand of one hand of all—as he aided Bobo in committing armed robbery by driving the car away. Because the evidence proves either Appellant or Bobo fired the shots, the lack of conclusive evidence of who actually did it is evidence that each of them did. *See Johnson*, 444 S.C. at 451, 908 S.E.2d at 451 ("[T]here is evidence Creep was the shooter because the evidence conclusively indicates either Johnson or Creep fired the shot that killed Smalls. The lack of evidence of which one did it, in this unique case, is evidence that each of them did it. The two arrived together after Johnson failed to recruit Stevens to join him in murdering Smalls. Two minutes after the two entered the breezeway, they quickly ran back to the Camry and drove off. If it was not Johnson, it was clearly Creep, and visa-versa.").

Accordingly, the State presented sufficient evidence to meet the "any evidence" threshold for a jury charge on accomplice liability, and "[t]o suggest the jury could not infer such a

scenario ... is to disregard the maxim that it is always for the jury to determine the facts and the inferences that are to be drawn from those facts." *Burdette*, 427 S.C. at 502, 832 S.E.2d at 582 (quotation omitted).

Harmless Error

Even if this Court finds the trial court somehow erred in giving the charge on the hand of one is the hand of all, any possible error was harmless beyond a reasonable doubt because it was not prejudicial to Appellant. To reverse a criminal conviction based on an erroneous jury instruction, the appellate court must find the error was a prejudicial error. *State v. Bowers*, 436 S.C. 640, 646, 875 S.E.2d 608, 611 (2022). Prejudicial error in a jury instruction is an error that contributed to the jury verdict. *Id.* The question that must be addressed is not whether the error was harmless beyond a reasonable doubt because of overwhelming evidence of guilt; rather, the question is whether the erroneous jury charge affected the jury's deliberations and, thus, contributed to the verdict. *Id.* at 646-47, 875 S.E.2d at 611. Indeed, when considering whether an error with respect to jury instructions was harmless, the appellate court must determine beyond a reasonable doubt that the error complained of did not contribute to the verdict. *State v. Perry*, 440 S.C. 396, 408, 892 S.E.2d 273, 279 (2023). Here, Appellant could not possibly have suffered any prejudice because the jury could not reach a verdict on the murder charge despite being given the accomplice liability instruction for which he complains. Where the jurors asked for a recharge on accomplice liability but still convicted of only one of the two charges, it could have reached no other conclusion but that Appellant was the principal actor in the armed robbery of Victim's car rather than an accomplice.

Conclusion

The State presented clear evidence of a common scheme between Appellant and Bobo. Taken as a whole, the State presented far more than 'any evidence,' and indeed presented more than sufficient evidence such that the only reasonable inference is that Appellant and Bobo went to the convenience store for the pre-arranged purpose of committing a crime, happened upon Victim's car, and after a quick discussion by the dumpster made the plan to steal Victim's car, all while having a gun that was used to accomplish the robbery. Because the State presented evidence of both pre-arrangement by Appellant and Bobo to commit the crime and of Appellant's direct participation in the crime, the trial court did not err in instructing the jury on "hand of one is the hand of all" accomplice liability theory. If this Court disagrees and finds the instruction was given in error, it was harmless beyond a reasonable doubt because it did not contribute to the guilty verdict for armed robbery.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that Appellant's conviction and sentence be affirmed.

Respectfully submitted,

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Columbia, South Carolina
March 26, 2026

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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
J. Mark Hayes, Jr., Circuit Court Judge

Appellate Case No. 2025-000568

The State, ...Respondent,

v.

Jermaine Culver, ...Appellant.

PROOF OF SERVICE

I, Susan Spencer, Legal Assistant, hereby certify that I have served the *Initial Brief of Respondent* and *Designation of Matter*, both dated March 26, 2026, on Appellant by sending an electronic copy via email to Wanda H. Carter, counsel of record for Appellant, at the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served. This 26th day of March, 2026.

Susan Spencer
Legal Assistant

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Susan Spencer

From:	Susan Spencer
Sent:	Thursday, March 26, 2026 9:58 AM
To:	Carter, Wanda
Cc:	Ben Aplin; Leverett, Scott
Subject:	The State v. Jermaine Culver (2025-000568)
Attachments:	CULVER Jermaine - Initial Brief of Respondent.pdf

Good morning Ms. Carter,

Attached please find the Initial Brief of Respondent and Designation of Matter in The State v. Jermaine Culver (2025-000568). These documents will be filed today with the Court of Appeals via the AIS OneDrive system. If you will, please confirm receipt.

Thank you.

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