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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Honorable Melissa M. Frazier, Family Court Judge
Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JERELLE HICKSON,

APPELLANT

APPELLATE CASE NO. 2025-000749

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I.

Whether the Family Court erred by transferring jurisdiction of Appellant's charges to the General Sessions court where the greater weight of the *Kent* factors and the pre-wavier evaluation favored keeping Appellant's case in the juvenile court?

II.

Whether the trial court erred in charging "the hand of one is the hand of all" where the evidence in the case did not support the charge?

III.

Whether the trial court erred in providing a vague response to a jury question that asked about the necessity of applying the "hand of one is the hand of all" during deliberations?

STATEMENT OF THE CASE

On March 21, 2023, Appellant Jerelle Hickson appeared before the Honorable Melissa M. Frazier in the Horry County Family Court for a juvenile transfer (wavier) hearing on juvenile petitions for murder, two counts of attempted murder, and assault and battery of a high and aggravated nature (ABHAN). The state was represented by Caroline F. Fox. Appellant was represented by David E. Rigney. F. Tr. 1; 4, ll. 6-15. At the conclusion of the hearing, Judge Fraizer took the matter under advisement. F. Tr. 86, ll. 1-3. On March 24, 2023, Judge Frazier issued an order transferring all the charges to General Sessions Court. R. (Waiver Hearing Order).

An Horry County grand jury indicted¹ Appellant for the murder of Dyquavyon Dickens-Jones (Decedent) in July 2023. R. (Indictment). The state, represented by Nancy Livesay and Delbert Leasure, called the case to trial before the Honorable Benjamin Culbertson and a jury on April 7, 2025. Appellant was again represented by Counsel Rigney. He was tried jointly with his co-defendant² Tai'Yuan Ja'Rel Jackson, who was represented by W. James Hoffmeyer. Tr. 1. On April 10, 2025, Appellant and co-defendant Jackson were both found guilty of voluntary manslaughter; Jackson was also found guilty of the accompanying weapons charge. Tr. 637-638. Appellant was sentenced to thirty years' incarceration. Tr. 654.

This appeal follows.

¹ The state also secured indictments on the attempted murder charges and the ABHAN charge but did not notice those indictments for trial. After Appellant's conviction, the state *nolle prossed* the remaining charges.

<https://publicindex.sccourts.org/Horry/PublicIndex/PISearch.aspx> case nos: 2023GS2603151, 153, 154

² Jackson was indicted for murder and possession of a weapon during the commission of a violent crime. Tr. 14, ll. 15-22.

STATEMENT OF THE FACTS

In April of 2022, Appellant, co-defendant Jackson, and several other teenagers headed to Myrtle Beach, South Carolina for spring break. The group traveled to the beach in three separate vehicles: a black Tahoe belonging to Li'Quan Hickson, a gold Tahoe belonging to co-defendant Jackson, and a white Honda belonging to co-defendant Jackson's girlfriend Shyra. Tr. 135, l. 11 – 137, l. 14; Tr. 140, l. 10 – 142, l. 5. The large group rented a condo from Thursday to Sunday. Tr. 137, ll. 24-25. The condo was equipped with a Ring doorbell camera.³ Tr. 474, ll. 1-25.

On Saturday, April 23, the group was out for the night in their three vehicles, riding the strip, and “just chilling.” Tr. 139 – 140. The group eventually made its way to a parking lot at Withers Drive and Mr. Joe White Avenue, just off of Ocean Boulevard, around 12:35 a.m. in the early morning hours of April 24. Roughly an hour later, gunfire erupted in the parking lot. A security camera from a business across the street from the parking lot captured the incident from a distance. Tr. 138, l. 1 – 139, l. 1; State's Exhibit 45 – EVENT parking lot security video (on file with this Court).

Myrtle Beach Police Department responded to the scene. Officer Kelsey Spaziani was responding to the scene when she was flagged down at nearby Sugar Alley to attend to a shooting victim. There she encountered the decedent laying in the alleyway by a sedan, sweating profusely, incoherent, and in and out of consciousness. She observed a single gunshot wound to the decedent's buttocks. She did not locate a weapon on or around his person. The decedent was transported by EMS to the hospital where he tragically succumbed to his injury. Tr. 509, l. 24 – 510, l. 12; Tr. 513, ll. 16-25.

³Ring is a home security subscription-based service that allows users to record activities at their door when the camera is triggered by motion or pushing the doorbell.

Members of the crime scene unit (CSU) processed the parking lot and surrounding areas. CSU investigator Shylah Davis photographed the sedan in Sugar Alley to document a bullet hole in that vehicle. She next moved to the far side of the middle of the parking lot to photograph a second vehicle that had sustained gunshot damage before moving toward the center of the parking lot to photograph a third vehicle that had sustained gunshot damage. Tr. 270, l. 18 – 271, l. 15. She did not observe any shell casings around the vehicles that had gunshot damage. Tr. 277, l. 2 – 278, l. 15. She collected numerous shell casings from the scene, with most of the casings being found on the Withers Drive side of the parking lot.⁴ Tr. 281, ll. 17-22; Tr. 282, l. 18 – 295, l. 16.

CSU officer Nathan Howitt responded to the scene to determine the trajectory of the gunshots. He was able to place a single trajectory rod in one vehicle to obtain “the general direction of where [the gunfire] possibly came from.” The general direction of gunfire appeared to originate in the same general area where most of the shell casings were found near Withers Drive. Tr. 383, l. 1-389, l. 11.

Individuals could not be determined due to the quality of the surveillance video; however, the video did lead police to focus the investigation on the gold Tahoe and the black Tahoe. Using various license plate readers, law enforcement was able to identify and produce photographs of the vehicles. State’s Exhibit 70-73 – LPR captures (on file with this Court). Search warrants were executed on the vehicles once they were in custody of law enforcement. Inside of the gold Tahoe, officers located the green outfit co-defendant Jackson was believed to be wearing the night of the shooting and a GLOCK 17 handgun. Tr. 305, l. 14 – 306, l. 10; Tr. 363, ll. 18-25. Inside the black Tahoe, officers located a shell casing in the driver’s seat, a 24-

⁴This is the same section of the parking lot where the black Tahoe and gold Tahoe are seen parking in State’s Exhibit 45.

round GLOCK magazine, a black ski mask, and six window scrapers. Tr. 355, l. 14 – 358, l. 12. No damage was documented on the exterior or interior of either Tahoe. Tr. 308, l. 21 – 309, l. 10; Tr. 353, l. 13 – 354, l. 25. It was noted that stickers/decals that had originally been on the back of window of both Tahoes had been removed by the time the vehicles were secured by law enforcement. Tr. 164, ll. 12-14; Tr. 302, l. 13 – 303, l. 2.

Subsequent testing of the green outfit revealed gunshot residue (GSR) on the top and shorts. Tr. 462, l. 7 – 463, l. 17. Firearms testing revealed that the GLOCK 17 handgun from the gold Tahoe belonging to Jackson had fired twenty of the recovered shell casings. Tr. 431, ll. 16-25. Testing additionally revealed that five recovered shell casings were fired from a second firearm, four of the recovered casings came from a third firearm, two recovered casings were found to have been fired from a fourth firearm, and seven recovered casings were found to have come from a fifth firearm. In total, eighteen shell casings were fired by four other guns not accounted for by the state. Tr. 435, ll. 2-5. Tr. 443, l. 14 – 445, l. 16. The bullet fragment recovered from the decedent was determined to *not* have been fired by the GLOCK 17 handgun found in Jackson's gold Tahoe. Tr. 446, ll. 4-14.

At trial, the state alleged “the defendants acted together in concert to commit [murder]; thus, both are responsible for each other's actions.” Tr. 88, ll. 22-25. The main thrust of the state's theory was that Appellant and Jackson fired shots at intended victims in a Chevy Malibu that pulled into the parking lot but struck and killed an innocent bystander. Tr. 89, ll. 12-14; Tr. 90, ll. 11-24. Only one witness, Nikera McAlister, testified at trial that Appellant was shooting a gun that night. McAlister initially told police she did not see who was shooting and only changed her statement the Friday before trial. Tr. 71-74; 223-226. Jackson admitted to police that he had fired his gun into the air twice that night in the parking lot. Tr. 244; 253.

An autopsy determined that Decedent had suffered a gunshot wound to the trunk. The projectile entered through the left buttock, transecting a portion of the bowel and liver, before becoming lodged in the diaphragm. The projectile caused “significant internal injuries and massive bleeding” that led to death. Tr. 518, ll. 14 – 519, l. 12.

ARGUMENTS

I.

The Family Court abused its discretion by transferring jurisdiction of Appellant's cases to the Court of General Sessions where the *Kent* factors and the pre-adjudicatory waiver report supported the family court retaining jurisdiction over the matter.

Standard of Review

The appellate court will affirm a transfer order unless the family court has abused its discretion. *State v. Miller*, 363 S.C. 635, 641, 611 S.E.2d 309, 312 (Ct. App. 2005) (citing *State v. Avery*, 333 S.C. 284, 292, 509 S.E.2d 476, 481 (1998)). The term 'abuse of discretion' has no opprobrious implication and may be found if the conclusions reached by the lower court are without reasonable factual support. *State v. Corey D.*, 339 S.C. 107, 118, 529 S.E.2d 20, 26 (2000); *Engle v. Engle*, 343 S.C. 444, 449–50, 539 S.E.2d 712, 714 (Ct. App. 2000) (stating an abuse of discretion occurs when the court is controlled by an error of law or where the order, based upon the findings of fact, is without evidentiary support). *Miller*, 363 S.C. at 641, 611 S.E.2d at 312.

Relevant Facts

Because Appellant was sixteen (16) years old at the time of the incident, his case originated in the juvenile court. A wavier hearing was held pursuant to S.C. Code Ann. § 63-19-1210 and *Kent v. United States*, 383 U.S. 541 (1966) to determine whether to retain jurisdiction of the charges in the Family Court or to transfer jurisdiction of the charges to General Sessions. During the hearing, the state elicited testimony from Detective Christopher White and Horry County Department of Juvenile Justice (DJJ) Director Miracle Griffith. Before the court were

some of Appellant's school records,⁵ DJJ event reports, a joint SCDDSN/DMH forensic competency evaluation, and the pre-waiver evaluation report by Dr. Michele Akers-Woody. F. Tr. 1-5.

The joint SCDDSN/DMH evaluation was conducted on August 16, 2022, and lasted 120 minutes. The evaluation was based on a single interview with Appellant, his school records from Florence County School District Three, an SCDMH Episodes of Care printout, a Hope Health progress note from August 2021, and the information pertaining to Appellant's charges. R. (Competency Report, pp. 1-2.). The report recognized Appellant was a "special education student," according to Florence County School District Three. Appellant was classified as a student "with a primary disability of Specific Learning Disability and a secondary disability of Other Health Impairment." R. (Competency Report, p. 2). While he was in the general education program for much of the day, he attended a resource period where he received special instruction. R. (Competency Report, p. 2.)

His school records reflected a history of disruptive behaviors. R. (Competency Report, p. 2.) Appellant reported he was diagnosed with ADHD and took medicine on school days to maintain focus. R. (Competency Report, p. 3). He was a patient at Pee Dee Mental Health Center from June 17, 2013 to March 11, 2015, but those records were not obtained for review. R. (Competency Report, p. 3). Previous psychological testing indicated Appellant's intellectual functioning was in the average range. R. (Competency Report, p. 3).

⁵Appellant had an Individual Education Program (IEP) that was entered during the pre-trial *Jackson v. Denno* hearing – Defense Exhibit 1, pre-trial hearing. Counsel Rigney claimed this report was presented to the Family Court during the waiver hearing. PT. Tr. 34, l. 16-20. However, there is no record of the IEP being presented to the Family Court, although there was testimony elicited by the state about the IEP during the wavier hearing. F. Tr. 39, ll. 5-9; F. Tr. 46, ll. 12-25. Critically, the IEP revealed that Appellant had a 0% reading level.

Because Appellant was a novice to the justice system, he had to be educated on the court process during the evaluation. According to the evaluation, immediately after receiving education, Appellant was “able to demonstrate an understanding of his charge, as well as a factual and rational understanding of legal proceedings.” R. (Competency Report, pp. 4-5). He was found to not suffer from any mental disease or disability, and he was found competent to stand trial. R. (Competency Report, pp. 5-6).

The fifteen-page pre-waiver evaluation was based on interviews with Appellant and his mother,⁶ *current* psychological testing of Appellant, and various records and collateral sources. R. (Pre-waiver Evaluation (PWE), p. 2). The report first noted that this was Appellant’s first and only referral to the juvenile justice system. R. (PWE, p. 3). It offered a starkly different opinion from the competency evaluation, reporting that Appellant was unable to recount the charges and punishment, requiring Counsel Rigney to explain everything to him. After having the charges explained to him, Appellant denied involvement stating: “[t]hey are trying to say I hurt people. That I killed someone. I don’t want to talk about it. I only have my truth. I got accused of something I didn’t do.” He reported his co-defendants “really know who did it, but they try to put my name on it cuz I’m the youngest.” R. (PWE, p. 3). Appellant’s mother likewise was still unsure about the events that led to Appellant’s arrest and informed the evaluator that she “hear[d] from the street my boy wasn’t even the shooter, he was running.” R. (PWE, pp. 3-4).

Two years prior to the incident, Appellant moved from his mother’s house in Florence to live with his father in Lake City. This was primarily because he lived with all females and did not like being the only boy. While Appellant stated he was living with his father at the time of

⁶ Appellant’s father Jerode McFadden did not answer his telephone and did not have a voicemail set up, therefore he was not interviewed as part of the evaluation. R. (Pre-waiver Evaluation, p. 2).

the incident, Ms. Hickson maintained that Appellant split his time between her house and his father's house. R. (PWE, p. 4). The structure of the two households was completely different. While Ms. Hickson was "a good mom," she was strict. Rules had to be followed, and Appellant was assigned household chores such as taking out the trash, cleaning the yard, and feeding the dog. Ms. Hickson maintained that when Appellant was in her care, she did not have many problems with Appellant because she was strict. When asked about his home with his father, Appellant stated "I was expecting rules like my mom's, but they didn't have any. There's no rules." He also did not have chores at his father's house. He described his relationship with his father as okay, stating "even when I stay in the same house, I don't mess with my dad." R. (PWE, p. 5). Appellant knew that Mr. McFadden had been in prison "for a long time" for "some assault."⁷ R. (PWE, p. 5)

Appellant discussed being shot in November 2021 and witnessing his friend get shot in the chest during the same incident. He was struck three times and reported bullet fragments were still in his hip that caused him pain. He was scheduled to have the bullet fragments removed prior to being detained. He never received therapy for the shooting incident, despite displaying symptoms of PTSD such as flashbacks where he sees "boys with guns and the blood" and "hears gunshots," has nightmares that impair his sleep, and experiences somatic symptoms including a fast heartbeat, pain in the chest, and feeling hot. R. (PWE, p. 7). He was also "worried and scared about getting shot again." R. (PWE, p. 5; p. 7).

⁷McFadden and a co-defendant were charged with murder in 2006. F. Tr. 38, ll. 3-19. The public index reveals that charge was *nolle prossed*, and McFadden pled to misprision of a felony for a ten-year sentence, suspended to 1177 days. <https://publicindex.sccourts.org/Florence/PublicIndex/PISearch.aspx> Case nos: I331140 and 2007GS2100562

The psychological testing and summary provided perhaps the most invaluable information about Appellant. Ms. Hickson reported that her “boy is not smart. He can barely read and can’t spell. He’s always struggled.” This statement was borne out through Appellant’s records and the updated testing that he underwent. Appellant had an IEP since elementary school for both his ADHD and learning disabilities. He also always had poor grades, and his learning disabilities “have impaired his reading, math, and writing. R. (PWE, p. 7). His report cards from sixth through eighth grades showed grades in core classes, such as math, science, and language, ranging from a *seven* to a *seventy-one*. His records also revealed that he repeated the third and eighth grades. R. (Wavier Hearing State’s Exhibit 2 – school records). Appellant revealed he was teased in school for being short and not being able to read. R. (PWE, p. 7).

The current mental status examination revealed Appellant had poor concrete verbal reasoning skills, verbal comprehension, and verbal expression, with a limited fund of knowledge. His thought process revealed an inability to think in the abstract. Testing⁸ placed his Full-Scale IQ at 54, which falls within the *extremely low range* of intellectual ability compared to other children his age. R. (PWE, p. 10). Appellant’s MMPI-A-RF⁹ revealed he lacked positive emotional experiences and was socially disengaged. He likely experienced anhedonia (the inability to experience joy or pleasure) and psychomotor retardation (a visible slowing of physical movements, speech, and cognitive processing, which is commonly a symptom of severe

⁸Due to Appellant’s documented reading disability, the evaluator read all measures and defined many words for him during the evaluation. R. (PWE, p. 10). Again, according to Appellant’s IEP, he has a reading level of 0%. R. (Defense Pre-trial Ex. 1)

⁹The Minnesota Multiphasic Personality Inventory-Adolescent-Restructured Form is an empirically based, self-report personality assessment for use with adolescents. It provides relevant information to aid clinicians in problem identification, diagnosis, and treatment planning for adolescents ages 14-to-18. R. (PWE, p. 11).

depression, bipolar disorder, or schizophrenia.) Appellant was found to be self-defeating, self-degrading, and passive. It was found to be likely that Appellant had few or no true friends and was introverted, socially withdrawn, and isolated. He reported being shy, easily embarrassed, and uncomfortable around others. R. (PWE, pp. 11-12).

Appellant had been prescribed medication for ADHD following his diagnosis when he was aged six or seven. He took medication and received counseling for his ADHD for some years. However, he had not received counseling for approximately six years at the time of the pre-waiver evaluation, and he reported that he had stopped taking his ADHD medication upon moving to his father's home. R. (PWE, p. 8). Appellant denied having a history of alcohol and substance abuse. He confirmed he tried vaping, Hennessey, and marijuana but did not "like doing no [sic] stupid stuff." Ms. Hickson only had knowledge of Appellant being introduced to those substances while he was at the beach for spring break. She admitted she did not know what occurred at Appellant's father's house. R. (PWE, p. 7).

Ms. Hickson acknowledged that Appellant had become easily angered and acted out before. She stated however that he did not fight "too much." Appellant reported he had gotten into several fights since he was a little kid. He discussed an incident at the school homecoming in November of 2021, where he "stomped" on an individual's head and the person developed a concussion. There is no record of this fight in the documentation provided, despite the school records extending through December 2021. F. Tr. 43, ll. 8-10. Further, Appellant's school records supported his mother's recollection. Behavioral incident reports covering August 2016 to June 2022 revealed fifty-six (56) incidents, of which *only two* involved physical fights

occurring on the bus.¹⁰ R. (PWE, p. 8). Curiously, Appellant indicated that he enjoyed fighting because “you never know what a person is capable of...instead of violence, you can fight it out.” R. (PWE, p. 8). He confirmed that if someone else starts a fight with him, he would finish it, even if the person was on the ground because that is how he protects himself. He maintained that he had never used a knife or gun to protect himself. Appellant acknowledged that he had never been taught how to process or handle emotions. R. (PWE, p. 8).

When discussing empathy, remorse, and responsibility, the evaluator found that Appellant demonstrated minimal insight, and the concrete nature of his answers evidenced little ability for abstract thinking. He acknowledged that after getting into a fight, he would think about what he had done and want to apologize because he was mad. Unsurprisingly, the sixteen-year-old had never truly thought about the consequences of fighting and the potential to seriously harm someone or himself. The evaluator found that Appellant had minimal insight and a only slight ability to feel empathy, as well as a slight ability to feel remorse, when presented with *hypothesized* crimes. This was likely due to Appellant’s maturity level and cognitive issues playing a role in the ways in which he processed and answered the questions posed to him in the evaluation, as opposed to a general lack of insight, empathy, and remorse exhibited in individuals with antisocial tendencies. R. (PWE, p. 9).

Turning to the relevant waiver factors, the pre-waiver evaluation found that Appellant’s overall risk for dangerousness was low, that his emotional maturity was low, and that he was amenable to treatment. R. (PWE, pp. 12-13). His level of criminal sophistication and dangerousness appeared lower than others in the juvenile justice system, as did his level of

¹⁰Incident Nos: 111631 from June 7, 2021 and 112598 from September 7, 2021. *See* R. (Waiver Hearing State’s Exhibit 2).

planning regarding the intent to commit crimes. His scores indicated that, compared to other adjudicated youth, he was less likely in terms of dangerousness to engage in criminal behaviors as similar juveniles. R. (PWE, p. 13). Appellant was found to be below average in maturity when compared to other individuals his age, while his ability to benefit from treatment and motivation to change was found to be average when compared to other offenders. R. (PWE, pp. 13-14).

There were both positive and negative factors regarding his likelihood for rehabilitation. A potentially negative factor was Appellant's minimal level of insight and empathy for *hypothetical* victims. However, testing did not necessarily indicate a *lack* of ability but revealed it could likely be the result of Appellant's cognitive deficits and concrete thinking. His mental health issues were another possible negative factor; however, Appellant had not received adequate treatment for his ADHD or his trauma symptoms. His positive factors for successful rehabilitation included his lack of prior criminal history, his family involvement, and his self-reported willingness to receive mental health treatment and fully participate. R. (PWE, p. 14).

That Appellant was charged with serious crimes involving the loss of life required caution and concern be shown when considering whether the public would be adequately protected if the charges stayed in Family Court. The report emphasized that most children, even those youth who commit violent offenses, do not continue to engage in behaviors into adulthood. Further, "experts say one must start with the presumption that juveniles are not at high risk to re-offend in adulthood" and then seek out data that confirms or disconfirms the presumption. R. (PWE, p. 14). After detailing the potential commitment options for Appellant, the evaluator stated that during the "indeterminate period of incarceration [within DJJ], the public *would be*

adequately protected from any further criminal acts committed by [Appellant].” R. (PWE, p. 15) (emphasis added).

At the hearing, Detective White testified to the investigation and underlying facts of the case. Appellant was identified through interviews with his co-defendants. Appellant, who was sixteen at the time of the incident, was alleged to be one of two shooters – adult co-defendant Jackson was alleged to be the other. Keeston F.¹¹ (a juvenile) and Li’Quan Hickson¹² were identified as two other co-defendants. F. Tr. 10, l. 13 – 12, l. 15; F. Tr. 14, l. 11 – 15, l. 20. Law enforcement determined that the decedent was an unintended victim. F. Tr. 8, ll. 2-8. The working theory of the case was that two of the other individuals that were wounded during the shooting were the intended targets, possibly as retaliation for a shooting incident involving Appellant and one of his friends. F. Tr. 9, l. 23 – 10, l. 12. White informed the Family Court that there was a photograph of the group of defendants prior to the incident, video of the incident, and Ring doorbell camera video from after the incident. F. Tr. 12, l. 16 – 13, l. 7; F. Tr. 19, ll. 2-14; F. Tr. 27, ll. 4 – 28, l. 14.

Horry County DJJ Director Miracle Griffith, who incidentally was not a qualified medical professional and did not perform the evaluation, testified to the pre-waiver evaluation without objection. F. Tr. 38 – 41. A large portion of her testimony was either confirming what was written in the evaluation or stating she could not state why the evaluator did or did not do follow up. During her testimony, the state entered DJJ Incident Reports for Appellant as Exhibit

¹¹Fulmore pled delinquent in the Family Court for accessory after the fact to murder. F. Tr. 32, ll. 19-21.

¹²Detective White stated that Li’Quan’s last name was Jackson, however, the trial transcript, as well as the public index, indicate Li’Quan’s last name is Hickson. Li’Quan’s accessory after the fact charge was *nolle prossed* on October 16, 2025.
<https://publicindex.sccourts.org/Horry/PublicIndex/PISearch.aspx> case no: 2022A2620600894.

3. The report showed twenty-two (22) total disciplinary incidents. The state claimed there were ten assaults; however, a thorough review of the incident dates and times revealed only eight assaults and one major disturbance. The remainder of the disciplinary actions were for minor matters. Notably, the report included twelve instances where Appellant was assaulted or threatened by other juveniles. There were also four instances where Appellant assisted in stopping a youth from assaulting a correctional officer, once reported a handgun on the unit that was recovered, and twice helped stop others from fighting. R. (Waiver Hearing State's Exhibit 3 – DJJ report).

After hearing arguments from the parties, the court took the matter under advisement. On March 24, 2023, the court signed an order waiving jurisdiction of the charges from Family Court to General Sessions. R. (Waiver Hearing Order). The order addressed each of the *Kent* factors, finding:

Factor One: the crimes Appellant was charged with were violent and serious. Considering the disparate sentencing ranges between adult and juvenile court, adequate protection of the public would be problematic if Appellant was released from DJJ upon his twenty-second birthday, or sooner under his specific guidelines. R. (Waiver Hearing Order p. 5).

Factors Two-Five: the offenses were aggressive, violent, and willful, the offenses were against people and property, and it was likely a grand jury would return indictments in the case. The court noted that at least one other co-defendant was charged in General Sessions court, and it would serve judicial economy to keep the cases together. R. (Waiver Hearing Order pp. 5-6).

Factor Six: Appellant appeared to be very street smart and savvy individual, despite testing in the extremely low average of most areas. His overall level of sophistication-maturity, dangerousness, criminal sophistication, psychopathic features, and planned and extensive criminality fell within the low range. He is amenable to treatment and his motivation to change is middle to slightly higher than other adjudicated youth. There were both

negative and positive factors to his potential rehabilitation. R. (Waiver Hearing Order pp. 6-8).

Factor Seven: Appellant has no prior criminal record however “it is clear that he has a history of prior violent acts that he has somehow escaped prosecution” including the self-reported “stomping” incident in November 2021. R. (Waiver Hearing Order pp. 8-9).

Factor Eight: Appellant was a victim in a prior shooting yet “he continued down the same path and did not try to avoid putting himself in troubling circumstances. Therefore, any member of the public could be at risk from harm by Appellant based upon his circumstances and who he chooses to associate himself with at the time.” The court also noted that while Appellant was amendable to treatment, there was concern treatment could not be adequately accomplished prior to his twenty-second birthday. R. (Waiver Hearing Order pp. 9-10).

The court concluded that “the seriousness of the offenses, the violence and loss of life, together with the protection of the public would be of great concern if the Family Court retained jurisdiction and [Appellant] was given an indeterminate sentence not to exceed his twenty-second birthday.” R. (Waiver Hearing Order p. 10).

Discussion

A waiver hearing exists to determine the “critically important question whether a child will be deprived of the special protections and provisions” of juvenile court. *Kent v. United States*, 383 U.S. 541, 553 (1966). The objectives of the juvenile court system are “to provide a measure of guidance and rehabilitation for the child and protection for society, not to fix criminal responsibility, guilt and punishment.” *Id.* at 554. Importantly, the state is to act as “*parens patriae* rather than prosecuting attorney and judge.” *Id.* at 554-555. Waiver is proper only after a full investigation. Full investigation is necessary as it,

[P]revents the waiver of jurisdiction as a matter of routine for the purpose of easing the docket. It prevents routine waiver in certain classes of alleged crimes. It requires a judgment in each

case based on an inquiry not only into the facts of the alleged offense but *also into the question whether the parens patriae plan of procedure is desirable and proper in the particular case.*

Pee v. United States, 107 U.S.App. D.C. 47, 50, 274 F.2d 566, 559 (1959) (emphasis added).

The criteria for determining whether to waive jurisdiction to the circuit court was established in *Kent*, and the criteria has been implicitly approved by our Supreme Court. *See State v. Avery*, 333 S.C. 284, 289 n. 3, 509 S.E.2d 476, 479 n. 3 (1998); *State v. Kelsey*, 331 S.C. 50, 65 n. 4, 502 S.E.2d 63, 70 n. 4. In *Kent*, the United States Supreme Court noted the following criteria for determining whether jurisdiction should be waived under the District of Columbia Juvenile Court Act:

1. The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.
2. Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.
3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if injury resulted.
4. The prosecutive merit of the complaint, i.e., whether there is evidence upon which a Grand Jury may be expected to return an indictment....
5. The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime....
6. The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.
7. The record and previous [criminal or adjudicative] history of the juvenile....
8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of

procedures, services and facilities currently available to the Juvenile Court.

Corey D., 339 S.C. at 117, 529 S.E.2d at 26 (citing *Kent*, 383 U.S. at 566-67). In evaluating whether the family court abused its discretion, the appellate courts consider the *Kent* factors and emphasize that the serious nature of the offense is a major factor in the transfer decision. *State v. Corey D.*, 339 S.C. at 118, 529 S.E.2d at 26 (2000). “It is the responsibility of the family court to include in its waiver of jurisdiction order a sufficient statement of reasons for, and considerations leading to, that decision. Conclusory statements, or a mere recitation of statutory requirements, without further explanation will not suffice.” *Id.* (citing *In re. Sullivan*, 274 S.C. 544, 265 S.E.2d 527 (1980)). The Family Court must also determine whether waiver is in the best interest of *both* the child and the community. *State v. Pittmann*, 373 S.C. 627, 558, 647 S.E.2d 144, 160 (2007) (emphasis added).

In waiving jurisdiction of Appellant’s cases to General Sessions, the Family Court abandoned its role as *parens patriae*, focusing largely on the nature of the offense and the disparate sentences that Appellant would face in juvenile versus adult court at the expense of the expert advice that recommended rehabilitation and guidance. While the nature of the offense is a major factor in a waiver decision, it is not *the* major factor in the decision. When weighed against the totality of the evidence, the nature of the offense did not justify waiver in this case as it was not in the best interest of both Appellant and the community. Further, the findings of the court were not supported by the evidence.

The Family Court made several errors that impacted the waiver decision. The waiver order findings were not supported by the updated psychological testing and expert advice. The order briefly acknowledged the expert findings before it, concluding that “upon reviewing all of the other evidence presented, [Appellant] appears to be very street smart and savy [sic]

individual.” There was little evidence of a street smart or savvy individual in the record. Appellant’s records reflected an immature, impulsive child with under-treated ADHD and untreated PTSD symptoms and a 0% reading level. Appellant’s Full-Scale IQ was 54, placing him in the *extremely low range* of intellectual ability when compared to others his age. His criminal sophistication and dangerousness was lower than other individuals within DJJ, and his level of planning with regard to intent to commit crimes was below average. That he was found to be “less likely in terms of dangerousness to engage in criminal behaviors as similar juveniles” appears to have been wholly disregarded. The testing further revealed Appellant to be below average maturity in comparison to his peers. In total, the empirical evidence revealed an individual that was very immature, of extremely low intellect, and very low in criminality, planning, and dangerousness – not a street smart and savvy individual. The Family Court failed to properly consider this evidence in its transfer decision, concluding without explanation that Appellant was street smart and savvy.

The court also gave undue weight to non-prosecuted conduct when considering Appellant’s prior history. The court found “a history of prior violent acts that he has somehow escaped prosecution.” Again, this was not supported by the evidence in the record. His school records revealed he was in two physical altercations on the bus. The self-reported “stomping” incident appears nowhere in school records, despite having purportedly occurred at a school events. While Appellant may have claimed to engage in many fights, the records provided to the court did not support that contention, and such weight should not be given to unverified conduct. Further, the DJJ records show that Appellant has been attacked more times than he was the cause of altercations with other youths and that he had actively assisted correctional officers while in

DJJ custody. Appellant did not have a lengthy hidden criminal or violent history but a behavioral history common of children with untreated or under-treated ADHD.

The Family Court fully disregarded Appellant's rehabilitation potential and found that waiver would be justified based on its concern that treatment goals would not be met by Appellant's twenty-second birthday. However, the pre-waiver order found not only that Appellant was amenable to treatment but that he had a motivation to change that was slightly higher than other adjudicated youth. The court, too focused on punishment, determined that DJJ could not rehabilitate Appellant prior to his twenty-second birthday, without articulating the basis for that concern. Not only was this finding improperly conclusory, it ignored that Appellant had no prior criminal history as well as an ability and desire to change.

The Family Court put too much weight on the seriousness of the offense. That Appellant was charged with murder seemed to be the driving factor in the waiver of the charges. This was improper. While the offenses charged were undoubtedly serious, the lack of prior criminal history, Appellant's family support, his willingness to receive help, his extremely low intelligence, and his immaturity weighed heavily in favor of retaining the charges in the Family Court. The Family Court disregarded the DJJ expert opinion that Appellant could receive rehabilitative treatment and the community would be adequately protected because of the seriousness and violent nature of the offense. The court abandoned its role as *parens patriae* and did not consider whether retaining jurisdiction was desirable and proper in this case because of the nature of the offenses. The greater weight of the evidence favored retaining the charges in the Family Court.

II.

The trial court erred in charging “the hand of one is the hand of all” where the evidence in the case did not support the charge.

Standard of Review

The evidence presented at trial determines the charged jury instruction. *State v. Blurton*, 352 S.C. 203, 207–08, 573 S.E.2d 802, 804 (2002) citing *State v. Lee*, 298 S.C. 362, 380 S.E.2d 834 (1989). The purpose of a jury instruction is “to enlighten the jury and to aid it in arriving at a correct verdict.” *State v. Leonard*, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987). 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). Errors, including erroneous jury instructions, are subject to harmless error analysis. *State v. Burdette*, 427 S.C. 490, 496, 832 S.E.2d 575, 578–79 (2019).

“When considering whether an error with respect to a jury instruction was harmless, we must ‘determine beyond a reasonable doubt that the error complained of *did not contribute to the verdict.*’” *State v. Middleton*, 407 S.C. 312, 317, 755 S.E.2d 432, 435 (2014) (quoting *State v. Kerr*, 330 S.C. 132, 144-45, 498 S.E.2d 212, 218 (Ct. App. 1998)) (emphasis added). “In making a harmless error analysis, our inquiry is not what the verdict would have been had the jury been given the correct charge, but whether the erroneous charge contributed to the verdict rendered.” *Id.* (quoting *Kerr*, 330 S.C. at 145, 498 S.E.2d at 218).

Relevant Facts

During the jury charge conference, Counsel Hoffmeyer raised an objection to the “hand of one is the hand of all” jury instruction. He argued that the case law required evidence that: 1) the defendant had a mutual plan or agreement with another person to commit the murder, and 2)

the other person in the mutual plan or agreement fired the fatal shot. He maintained there was no evidence of a mutual plan or agreement between the defendants to commit any crime, and therefore the charge on accomplice liability would be improper. Counsel Rigney, on behalf of Appellant, joined the objection agreeing that there was no evidence in the record of “a common plan, a common design, joint plan or any of those things.” Tr. 548, l. 23 – 549, l. 18.

The state argued the defendants went to Myrtle Beach together, they had guns, they were riding around together in their respective vehicles and were in the parking lot together. Regarding the video, the state alleged it shows them in the parking lot, then all the vehicle headlights come on, and Jackson walks away from his gold Tahoe to the black Tahoe “because they have already arranged somebody to drive his Tahoe” from the scene. After the shooting, both individuals got into the black Tahoe to leave and arrived at their rental property together. The state asserted that Appellant and Jackson were “acting in concert without a doubt throughout the entirety of this crime.” Tr. 549, l. 19 – 520, l. 17. The court declined to remove the charge. Tr. 550, ll. 21-22.

During the jury charge, the court informed the jury,

Now, 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 a common plan or purpose.

For example, two people can be guilty of burglary when only one of the two enters a dwelling and steals property while the other waits outside the house as a lookout and assists in the crime. 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 it is 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 that

crime. Mere knowledge that another person is going to commit a crime, even if the defendant is present when the crime is committed, is not sufficient to convict the defendant as a principle. Guilt as a principle is shown by actual or constructive presence at the scene as a result of a prior arrangement. Therefore, a finding of a prior arranged plan or common scheme is necessary for a finding of guilt as a principle.

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, aiding, abetting, or assisting in the committing of the crime. When a person does an act in the presence of and with the assistance of another, the act is done by both. Where two are more, acting with a common plan or intent, are 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.

"Present at the commission of a crime" means to be sufficiently near to aid and abet and assist in the commission of the crime; however, mere presence at the scene of a crime is not sufficient to convict one as a principal on the theory of aiding and abetting. Intent is also a necessary element for there must have been a common design or intent to commit the crime, and the crime must have been committed pursuant thereto with the person aiding and abetting by some overt act.

"Intent" means intending the result which actually occurs, not accidentally or involuntarily. Intent may be shown by acts and conduct of the defendant and other circumstances from which you may naturally and reasonably infer intent. The State must prove these elements beyond a reasonable doubt.

Tr. 619, l. 12 – 621, l. 9. Counsel renewed the objection after the jury was charged. Tr. 628, l. 20 – 629, l. 7.

Discussion

The state failed to establish that Appellant had a mutual plan or agreement with co-defendant Jackson to commit a murder and that co-defendant Jackson fired the fatal shot. The state also failed to establish the reverse – that Jackson had a mutual plan or agreement with

Appellant to commit the murder and that Appellant fired the fatal shot. Because there was no evidence of any plan or agreement to commit any crime between Appellant and Jackson, it was error for the court to charge the hand of one is the hand of all.

Under the doctrine we refer to in South Carolina as “the hand of one is the hand of all,” the state proves the defendant guilty by proving he had *a mutual plan or agreement with another person to commit one crime*, and during the course of committing that initial crime, the *other person committed a second crime* they had not agreed to commit. *State v. Sellers*, 442 S.C. 140, 148, 898 S.E.2d 116, 120 (2024) (emphasis added). “One combining and confederating with others to accomplish an illegal purpose is criminally liable for everything done by either him or his confederates which follows incidentally in the execution of a common design as one of the probable and natural consequences, *though not intended as a part of the original design or common plan.*” *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) (emphasis added). “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). The trial court must determine whether there is any evidence the defendant had a mutual plan or agreement with another person to commit an initial crime. *State v. Sellers*, at 149, 898 S.E.2d 121.

The crux of an accomplice liability charge is that the defendants had a mutual plan or agreement with one another to commit some initial crime. The state’s theory of the case was that the intended victims were in Chevy Malibu. For accomplice liability to have been proper, the state would have had to present evidence that Appellant and Jackson 1) knew the intended

victims were going to be in Myrtle Beach for spring break, 2) agreed to commit a crime against the intended victims that night, and 3) put that plan into agreement by going to the parking lot with the intent to commit the crime against the intended victims. There was no such evidence presented at trial.

The evidence at trial established that the group of youths, including Appellant and Jackson, went to Myrtle Beach for spring break – they were there to party. There was no testimony that the group of teenagers traveled to Myrtle Beach to commit murder or any other crime. The testimony was that, on the night the shooting occurred, the group was cruising the strip before they ended up in the parking lot which was a popular hangout spot for the youth. There was no testimony elicited to show that Appellant and Jackson knew the intended victims would be in Myrtle Beach for spring break, much less in that parking lot, or that the pair planned to commit some crime. A group of teenagers traveling to Myrtle Beach together, staying in a shared rental, and riding around together in the same vehicles was not evidence of a “mutual plan or agreement to commit a crime” sufficient to support the accomplice liability charge. The court erred in giving the charge where there was no evidence of a mutual plan or agreement to commit a crime.

III.

The trial court erred in providing a vague answer to a jury question that asked about the necessity of applying the “hand of one is the hand of all” during deliberations.

Standard of Review

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). “It is error to give instructions which are calculated to confuse or mislead the jury.” *Id.* “Errors, including erroneous jury instructions, are subject to harmless error analysis.” *State v. Burdette*, 427 S.C. 490, 496, 832 S.E.2d 575, 578–79 (2019).

“When considering whether an error with respect to a jury instruction was harmless, we must ‘determine beyond a reasonable doubt that the error complained of *did not contribute to the verdict.*’” *State v. Middleton*, 407 S.C. 312, 317, 755 S.E.2d 432, 435 (2014) (*quoting State v. Kerr*, 330 S.C. 132, 144-45, 498 S.E.2d 212, 218 (Ct. App. 1998)) (emphasis added). “In making a harmless error analysis, our inquiry is not what the verdict would have been had the jury been given the correct charge, but whether the erroneous charge contributed to the verdict rendered.” *Id.* (*quoting Kerr*, 330 S.C. at 145, 498 S.E.2d at 218).

Relevant Facts

The jury began deliberating at approximately 1:34 p.m. on the final day of trial. At 3:14 p.m., the jury sent out a note with two questions. The first question was “Is the ‘hand of one, hand of all’ a law that has to be followed?” Tr. 631, ll. 5-16; Court’s Ex. 1 – jury note. (emphasis in the original). Initially, the court was simply going to respond “yes” to the question. The state had no objection to the court’s proposed answer. Counsel Hoffmeyer argued that the question

should be answered with “if they find the ‘hand of one, hand of all’ is appropriate under the facts and evidence of the case, it has to be followed.” The court countered, “what if I put ‘yes, if the state proves it beyond a reasonable doubt?’” Both defense counsels Hoffmeyer and Rigney agreed. Tr. 631, l. 16 – 632, l. 5

The state argued that “everything that was charged to you is the law and it has to be followed. That’s just it.” Tr. 632, ll. 8-14. The court asked if it put “All the charges on the law by the Court have to be followed?” and the state agreed that was proper. Counsel Hoffmeyer again reiterated that the correct answer would be “if the jury finds from the evidence in this case that the state has met their burden of proof beyond a reasonable doubt that the ‘hand of one, hand of all’ applies, then you must apply it.” Counsel Rigney agreed with Counsel Hoffmeyer. Tr. 632, ll. 15 – 633, l. 2.

After further discussion about the nature of the question posed by the jury, the court stated:

Like I say, they're asking me one of two things. They're asking me, do they have to follow it or do they have the option not to follow it? Or they're asking me to comment on whether or not I think the State has proved it beyond a reasonable doubt. And I don't know which one they're asking me.

That's why I don't want to put in there, "Yes, you have to follow it," and then think I'm telling them the State has proved it beyond a reasonable doubt. And I don't want to put in there, "Yes, you have to follow it if the State has proved it beyond a reasonable doubt," because then they might be saying, "Well, according to him, he thinks the State has proven it." That's why I'm just -- I'm thinking the State's position is probably more accurate that says, "You must follow the entire -- you must follow all of the law as charged by the Court."

Tr. 634, ll. 3-25. The court, after acknowledging the objection by both Counsels Hoffmeyer and Rigney, responded to the jury with: “You must follow the law as it was charged to you by the

Court.” Tr. 635, ll. 2-17. The jury resumed deliberations at 3:24 p.m. and continued until 5 p.m. when the verdicts were reached. Tr. 636, ll. 3-8.

Discussion

The trial court incorrectly informed the jury that it must apply the hand of one is the hand of all during deliberations. This was not a proper answer to the jury question because the theory of accomplice liability would apply *only if* the state had proven the theory with evidence beyond a reasonable doubt. The failure to ensure the jury understood that it only had to follow the hand of one theory if the jury determined the state had proven the theory beyond a reasonable doubt was error that contributed to the verdict.

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)). 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 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”).

To determine whether the erroneous jury charge contributed to the verdict, the appellate court must attempt to determine how the jury understood the initial jury instruction and the trial court's answer to the jury's question. “[T]he appropriate test involves determining what a reasonable juror would have understood the charge to mean.” *State v. Bowers*, 436 S.C. 640, 646–47, 875 S.E.2d 608, 611 (2022). *See Sheppard v. State*, 357 S.C. 646, 664, 594 S.E.2d 462, 472 (2004) (stating “the test is what a reasonable juror would have understood the charge as meaning”), overruled on other grounds by *State v. Burdette*, 427 S.C. 490, 503 n.3, 832 S.E.2d 575, 583 n.3 (2019); *State v. Jackson*, 297 S.C. 523, 527, 377 S.E.2d 570, 572 (1989) (same).

Not only did the trial judge err in charging accomplice liability to the jury, but the court compounded the error by not providing a clear answer to the jury's question. The note from the jury evidenced confusion about the application of accomplice liability. The court did not answer this question but merely told the jury to follow the law as charged. The answer did not clarify for the jury whether accomplice liability must be applied if found to be true beyond a reasonable

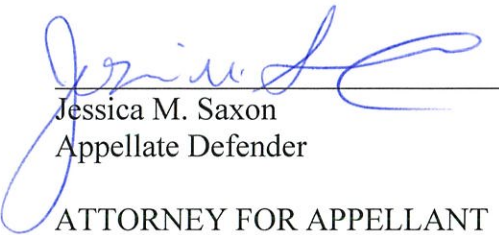
doubt but implied that it must be followed regardless of what facts the jury found as true – that was a misstatement of the law.

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.*

The judge’s answers provided no clarity to the jury and left them to apply their own layman’s interpretation to a highly complex area of the law. Appellant was prejudiced as the evidence in the case did not support a theory of accomplice liability – mainly there was no plan or agreement to commit a crime – and the jury being told that it must apply that law relieved the state of its burden of proof. In failing to clearly answer the question, the judge created reversible error.

CONCLUSION

Based on the foregoing arguments, Appellant respectfully requests this Court reverse and remand his conviction and sentence for a new trial.


Jessica M. Saxon
Appellate Defender
ATTORNEY FOR APPELLANT

This 30th day of March, 2026.