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Jun 25 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
The Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2026-000473
Trial Court Case No. 2021GS2601191

Meagan Jackson.....Appellant,

v.

The State of South Carolina.....Respondent.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court err in charging “the hand of one is the hand of all” to the jurors twice when the state’s only theory of the case was that Ms. Jackson was the sole shooter, zero evidence was presented by the state that Ms. Jackson acted as an accomplice, the trial court directed a verdict of not guilty of conspiracy, finding that there was no evidence of an agreement to commit a crime, and, during deliberations, the jurors’ only question was, “What classifies as hand of one, hand of all? What are the parameters? Does just being present at the scene of a crime classify as hand of one, hand of all?”
- II. Did the trial court err in admitting an entire Cellebrite extraction into evidence when the contents were not identified or reviewed by the trial court, and it was later revealed that it contains text messages about abortion, a photograph of a bottle of “Black Cohosh” which is used to induce miscarriages, a photograph of an aborted fetus, vulgar language, and nude photographs, including photographs of Ms. Jackson’s breasts and vagina?
- III. Did the trial court err in admitting text messages about abortion, a photograph of a bottle of “Black Cohosh” which is sometimes used to induce miscarriages, a photograph of an aborted fetus, vulgar language, and nude photographs, including photographs of Ms. Jackson’s breasts and vagina?

STATEMENT OF FACTS

In April of 2021, Ms. Jackson is indicted on charges of murder, 2021-GS-26-01191, and criminal conspiracy, 2021-GS-26-01195. In June of 2024, the Horry County Solicitor's Office indicts Ms. Jackson on the additional charges of kidnapping, 2024-GS-26-03530, and conspiracy to commit kidnapping, 2024-GS-26-03530, related to the same incident as the murder charges. On June 9, 2025, the state calls Ms. Jackson's case for trial before the Honorable Benjamin H. Culbertson. The state declines to proceed on the kidnapping and conspiracy to commit kidnapping charges and proceeds to trial on the murder and criminal conspiracy charges.

The Brittain Law Firm represents Ms. Jackson at trial, and the 15th Circuit Solicitor's Office prosecutes the case. During the course of the trial, multiple exhibits are admitted over Ms. Jackson's objections that include:

- Text messages with hearsay statements from the Victim and from the co-defendant in this case, see Exhibits 98, 98A, and 98B, Exhibits 99, 99A, and 99A2, Exhibits 99J and 99J2, Exhibits 100B and 100B2 through 100N and 100N2,
- Text messages that include vulgar language about sexual intercourse, see Exhibits 98, 98A, and 98B, Exhibits 99J and 99J2,
- Graphic photographs of Ms. Jackson's breasts, see Exhibits 99D and 99D2, Exhibits 100Q and 100Q2,
- Graphic photographs of Ms. Jackson's vagina, see Exhibits 99D and 99D2, Exhibits 100Q and 100Q2,

- Graphic and disturbing text messages about abortion, Exhibits 98, 98A, and 98B, Exhibits 99, 99A, and 99A2, Exhibits 99E and 99E2, Exhibits 99F and 99F2, Exhibits 99G and 99G2, Exhibits 99H and 99H2, Exhibits 99I and 99I2, Exhibits 100B and 100B2 through 100N and 100N2,
- A photo of a bottle of “Black Cohosh,” which is used to induce miscarriages, Exhibits 99, 99A, and 99A2, Exhibits 100-O and 100-O2,
- Text messages regarding uncharged prior bad acts, including illegal fake identifications and illegal abortion, Exhibits 98, 98A, and 98B, Exhibits 99, 99A, and 99A2, Exhibits 99E and 99E2, Exhibits 99F and 99F2, Exhibits 99G and 99G2, Exhibits 99H and 99H2, Exhibits 99I and 99I2, Exhibits 100B and 100B2 through 100N and 100N2,
- A photograph that could be a female child without pants, Exhibits 98, 98A, and 98B, Exhibits 100P and 100P2, 100Q and 100Q2, and
- A graphic photograph of what appears to be an aborted fetus that includes tiny legs and a little hand. Exhibits 98, 98A, and 98B, Exhibits 100R and 100R2.

At the close of evidence, the trial court directs a verdict of not guilty on the general conspiracy charge, Trial Tr., 830/10 through 832/5, finding that the state had not “presented any evidence of a prearranged plan between this defendant and any other person... to commit the crime...” Id. at 832/2-5.

The trial court charges the jury on the law of “hand of one is the hand of all,” Id. at 880/22 through 882/18, over Ms. Jackson’s objections. Id. at 838/1 through 842/16, 844/7-8, 884/19-20. During deliberations, the jury sends out a note asking, “What classifies as

hand of one, hand of all? What are the parameters? Does just being present at the scene of a crime classify as hand of one, hand of all?” The trial court recharges the jury on the law of “hand of one is the hand of all,” Id. at 890/3 through 892/7, the jury returns a verdict of guilty, and Ms. Jackson is sentenced to life in prison.

ARGUMENT

- I. **Did the trial court err in charging “the hand of one is the hand of all” to the jurors twice when the state’s only theory of the case was that Ms. Jackson was the sole shooter, zero evidence was presented by the state that Ms. Jackson acted as an accomplice, the trial court directed a verdict of not guilty of conspiracy, finding that there was no evidence of an agreement to commit a crime, and, during deliberations, the jurors’ only question was, “What classifies as hand of one, hand of all? What are the parameters? Does just being present at the scene of a crime classify as hand of one, hand of all?”**

The trial court erred in charging the law of “the hand of one is the hand of all” where the State introduced no evidence that anyone other than Ms. Jackson was the shooter and no evidence that Ms. Jackson was an accomplice to the murder.

At the close of the state’s case, the trial court directs a verdict of “not guilty” of criminal conspiracy and finds that the state presented no “evidence of a prearranged plan between this defendant and any other person... to commit the crime...” Trial Tr. 832/2-5.

Knowing that the court is going to charge the law on accomplice liability, the prosecutor, without evidence, argues “the hand of one is the hand of all” to the jurors in her closing argument. Id. at 857.

The jurors' only question further demonstrates the confusion and prejudice resulting from the improper jury instruction. They ask, "What classifies as hand of one, hand of all? What are the parameters? Does just being present at the scene of a crime classify as hand of one, hand of all?" Id. at 887, and the trial court then repeats the error by charging the jurors a second time with "hand of one is the hand of all." Id. at 890-892.

If all the evidence indicates the defendant was the only shooter, the hand of one theory must not be charged.

"If all the evidence indicates the defendant was the only shooter, the hand of one theory must not be charged." State v. Sellers, 898 S.E.2d 116, 442 S.C. 140, 149 (S.C. 2024). In a "typical case, two or more people agreed to commit the initial crime, and during the course of that crime a person who is not the defendant shot and killed a victim. This typical scenario is that one of them—not both of them—fired the shot that killed the victim." Id.

When "the evidence is clear the other person—not the defendant—fired the fatal shot, the hand of one doctrine clearly applies and the trial court will instruct the jury on the doctrine without hesitation." Id. The Court outlines three points where the evidence must be clear before charging "the hand of one is the hand of all:"

1. "Whether there was a mutual plan or agreement,"
2. "Whether the person who might have fired the fatal shot was part of that plan or agreement," or
3. "Whether the other person in the plan or agreement is the person who fired the fatal shot."

Id. at 148-149.

“As to the first point, 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.” *Id.* at 149, citing *State v. Harry*, 420 S.C. 290, 299, 803 S.E.2d 272, 276 (2017). As we will discuss below, not only did the state present no evidence of a “mutual plan or agreement,” but the trial court, in directing a verdict of acquittal on Ms. Jackson’s criminal conspiracy charge, found that the State presented no “evidence of a prearranged plan between this defendant and any other person... to commit the crime...” *Trial Tr.* 830/10 through 832/5.

“As to the second point, the trial court must determine whether there is any evidence the other person who might have fired the fatal shot was a person included in the mutual plan or agreement to commit the initial crime.” *Sellers*, 442 S.C. at 149. For example, in *State v. Washington*, 431 S.C. 394, 848 S.E.2d 779 (2020), there was evidence that another person (Kinloch) “joined together with the defendant to harass and assault [the Victim] ... and there was evidence another person—not the defendant—fired the shot that killed Manigault.” *Id.* at 406-7.

Even when there is evidence that the person who fired the fatal shot joined in a plan or agreement with the defendant, the third point requires that the person, who cannot be the defendant, who fired the fatal shot also be the same person who joined the defendant in a plan or agreement. For example, in *Washington*, there was no evidence Kinloch fired the shot, *Washington*, 431 S.C. at 409, 848 S.E.2d at 787, and there was no evidence the other person who might have fired the shot was part of the agreement to commit the initial crime, *Washington*, 431 S.C. at 407, 848 S.E.2d at 786. The Court found that the “hand of

one is the hand of all” jury instruction should not have been given because "there was no evidence Kinloch shot [the Victim]," Washington, 431 S.C. at 409, 848 S.E.2d at 787, and "Kinloch is the only possible person who could fall into the category of Petitioner’s accomplice," Washington, 431 S.C. at 407, 848 S.E.2d at 786.

If there is evidence of a plan or agreement, *and* if there is evidence that both the defendant *and* another person who was part of the plan or agreement fired the fatal shot, the “hand of one is the hand of all” is an appropriate jury instruction. Barber v. State, 393 S.C. 232, 712 S.E.2d 436 (S.C. 2011).

“Barber requires the trial court to determine whether—in addition to evidence the defendant fired the shot—there is any evidence the person with whom he agreed to commit the initial crime fired the shot. By stating the evidence must be ‘equivocal,’ we simply meant the evidence must support both alternative theories as to which person was the shooter. If all the evidence indicates the defendant was the only shooter, the hand of one theory must not be charged.” State v. Sellers, 898 S.E.2d 116, 442 S.C. 140 (S.C. 2024).

No evidence of a plan or agreement and no evidence that anyone other than Ms.

Jackson was the shooter was presented at trial.

Ms. Jackson first objects to the trial court’s proposed jury instruction on the law of “hand of one is the hand of all” before closing arguments, saying to the trial court, “We’re concerned of one charge that you’re going to be asked to give, which is ‘hand of one is the hand of all.’” Trial Tr. 838/1-3.

The trial court then asks the prosecutor to identify what evidence was introduced at trial that would support charging “hand of one is the hand of all,” and the prosecutor is unable to provide an answer.

The court asks, “What evidence is there that Mr. Dontell [Ms. Jackson’s co-defendant] committed the act and she was there aiding and assisting in the commission of that?” Id. at 838/5-9. The prosecutor replies that there is evidence that Mr. Dontell and Ms. Jackson were together on the day of the incident, and the defense will argue in closing that Mr. Dontell is the shooter; therefore, “it’s up to the jury to decide whether or not they were acting together for ‘hand of one, hand of all...’” Id. at 838/10-25. The prosecutor argues that, because Mr. Dontell testified that he drove the van, loaded the body into the van, and disposed of the body, “it is up to the jury to decide whether or not Mr. Dontell knew what was going to happen.” Id. at 838/10-25.

The question, however, is not whether Mr. Dontell knew what would happen. Id. at 682/9-14. The question is whether there was any evidence that Mr. Dontell committed the murder as “the trigger person.” The trial court points out that, “for this defendant to be guilty under the theory ‘the hand of one is the hand of all,’ you have to have Mr. Dontell committing the crime and her there aiding and assisting in the commission of the crime. If you have her committing the crime, it’s not the hand of one [is the hand of all].” Id. at 839/1-8. The prosecutor replies by saying, again, that she believes the defense will argue that Mr. Dontell pulled the trigger and not Ms. Jackson. Id. at 839/9/16. “It is, therefore, up to the jury to decide either way. They can believe all of his testimony, none of his testimony, or

part of his testimony. So it would certainly be within the jury's purview to say, 'Well, we believe most of what he said, but we think he pulled the trigger and not her.'" Id.

It is not, however, within the jury's purview to say, "we think he pulled the trigger and not her," if there is no evidence to support that theory. The trial court asks a second time, "What evidence has the State presented that he did pull the trigger and she was there aiding and assisting him? That's 'the hand of one is the hand of all.' What has the State presented in its case-in-chief that shows Mr. Dontell committed this crime and that she is guilty as a principal because she was there aiding and assisting him in the completion of the crime?" Id. at 839/17-23.

The prosecutor's response is, "I think that, given the fact that the jury can believe all, some, or nothing from Mr. Dontell's testimony opens that possibility that he is the one -- again, as I'm sure the defense is going to argue -- that he is the one who fired the gun and not Ms. Jackson." Id. at 839/24 through 840/3.

When the trial court asks a third time, "What evidence do you have that he is the one that fired the gun," the prosecutor says that she does not believe that Mr. Dontell "is the one, but certainly there is that possibility within his testimony if the jury believes only part of what he said." Id. at 840/6-8. What that would require, however, is for 1) the jury to believe only part of what Mr. Dontell said, rejecting his testimony that he did not know what was going to happen, *and* 2) the jury to believe additional facts that are not in evidence (that Mr. Dontell fired the gun).

Mr. Dontell's Testimony

Mr. Dontell testifies at trial, but his testimony does not support the state's theory that Mr. Dontell was the shooter. He testifies that, on the evening of the murder, Ms. Jackson told him, "I have to go see Gregg," and "she would just be a few minutes, just go with her." Trial Tr. at 655/3-18. Mr. Dontell says he went with her, and he drove her van. Id. at 20. Mr. Dontell testifies that Ms. Jackson called and talked to Gregg on the phone as they drove, and that they were going to meet Gregg outside of his apartment because she wasn't comfortable going inside. Id. at 656/1-10. Mr. Dontell then says that, as they pull up to Gregg, "She opened up the door and shot him." Id. at 656/25. When asked what he did next, he says, "Froze," implying that what had just happened was a surprise to him. He then helped to transport the body to a funeral home as she yelled and cursed at him. Id. at 659. He also says that she threatened to kill him, Id. at 661/7-10, implying that he was acting under duress.

Mr. Dontell continues to suggest that he was only operating under duress. He says that Ms. Jackson ordered him to "get rid of the body," Id. at 666/23-25, and he said, "No." Id. at 667/2. He says, "It was an ongoing debate all day, with me refusing to do it and then her telling me that, if that body gets found at the funeral home, she's going to kill me." Id. at 667/9-12. He goes on to explain that he believed Ms. Jackson would kill him, and that is why he proceeded to dispose of Gregg's body. Id. at 667/12 through 668/5.

On cross-examination, Mr. Dontell explains that, after lying to the police, he only told the truth "...once I had protection from [Ms. Jackson] – once my family was protected from her and her threats," because he was scared of her. Id. at 681/22 through 682/3.

When the defense asks, “... your testimony is you didn’t have anything to do with the shooting. You didn’t know it was going to happen; right,” Mr. Dontell replies, “That’s correct. I did not know the shooting was going to happen.” Id. at 682/9-14.

Mr. Dontell testified that he was “arrested in this case,” Id. at 629/22-23, and that he pled guilty to “accessory after the fact” and “conspiracy” when his case was called for trial. Id. at 630/13-14. Although Mr. Dontell was initially charged with murder, at no point does he testify that he was initially charged with murder. He does not even state that he pled guilty to accessory after the fact *to murder* or conspiracy *to murder* – he only says, “accessory after the fact” and “conspiracy.” Id. No one testified before the jury that Mr. Dontell had originally been charged with murder, and the first time the jurors heard this was from the prosecutor in her closing argument.

Even if the jury had been told that Mr. Dontell was initially charged with murder, the fact that Mr. Dontell was charged – a charge that the Solicitor’s Office subsequently dismissed - could not have been evidence that he committed murder. As the trial court, and all criminal trial courts in South Carolina, say in the court’s opening remarks, “What you need to know now, though, is that these indictments are simply the charges by which this case is brought into this court. They are not in any sense evidence of any of the allegations contained in them.” Trial Tr. 123/25 through 124/3.

Furthermore, his guilty plea to accessory after the fact to murder or conspiracy to murder cannot be evidence that he committed the murder, because a person “...cannot be charged with conspiracy to commit the substantive offense and also with the substantive crime itself.” State v. Wells, 249, 256, S.C. 249, 153 S.E.2d 904, 907-8 (1967).

The Trial Court's Ruling and Jury Instruction

Before calling a recess, the trial court says, “I don’t know that I recall the State putting up anything that shows Mr. Dontell is the one who committed the crime. Now, they can argue that, but I don’t know that there’s anything in the record from the State that shows Mr. Dontell as the trigger person, so to speak.” Id. at 840/12-23.

After returning from a break, without citing additional evidence, the trial court states, “I did include ‘the hand of one is the hand of all.’” Id. at 841/11-24. The trial court explains, “the fact that, under Mr. Dontell's examination, it came out that he was charged with murder and conspiracy and that that -- he worked out a deal in January -- I think it was January -- when his case was called for trial, or whenever his case was called, I think that creates evidence that, yes, he may have been the one to actually pull the trigger and, therefore, “the hand of one is the hand of all,” that she was active with him. The fact that that came out during his testimony does show that there is some evidence there where a jury could believe that, yes, he's the one that committed the crime as the actual perpetrator. That's why I included it in there.” Id.

When the trial court says, “the fact that that came out during his testimony...,” the trial court could only be referring to Mr. Dontell’s testimony that Mr. Dontell “was charged with murder and conspiracy and that he worked out a deal in January.” However, the trial court was incorrect in stating that, “under Mr. Dontell's examination, it came out that he was charged with murder...” Id. During his testimony before the jury, Mr. Dontell stated only that he was “arrested in this case,” Id. at 629/22-23, and that he pled guilty to “accessory

after the fact” and “conspiracy” when his case was called for trial. Id. at 630/13-14. Mr. Dontell did not speak the word “murder” at any point in his testimony regarding his own criminal charges.

Even if the jurors had heard from Mr. Dontell that he was originally charged with murder, the fact that Mr. Dontell was charged with murder, but not convicted of murder, is not evidence “where a jury could believe that, yes, he’s the one that committed the crime as the actual perpetrator.” It is, in fact, evidence of the opposite – Mr. Dontell’s murder charge was dismissed by the 15th Circuit Solicitor’s Office when they determined that, in their view, he was an accomplice but not the “trigger person.” At his plea hearing, Mr. Dontell admitted to accessory after the fact to murder and criminal conspiracy; he did not admit to murder; and no evidence was presented at Ms. Jackson’s trial that Mr. Dontell was the shooter.

When Ms. Jackson renews her objection before closing arguments, Id. at 842/3-16, the trial court reiterates that Mr. Dontell’s plea to accessory after the fact is evidence that he committed the murder, saying, “And your objection is on the record. And before I started reviewing notes and going over the charge of ‘the hand of one is the hand of all,’ I was inclined to agree with you. But then I do recall Mr. Dontell’s testimony where he was charged as the principal, and then, the day of his trial, he made the deal with the State and pled to accessory after the fact. So I think that’s -- there is evidence there that he committed the crime and that she was acting -- and that’s the reason -- I wanted to get on the record the reason for my decision.” Id.

After closing arguments, the trial court charges the jury on the law of “the hand of one is the hand of all:”

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 and purpose. For example, two people can be guilty of bank robbery when only one of the two enters the bank and takes money from the cashier while the other acts as a lookout in the getaway car. 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 principal. Guilt as a principal 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 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, aiding, abetting 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. Where two or 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.

Id. at 880/22 through 822/18.

After the trial court's jury instructions, Ms. Jackson again renews her objection to the "hand of one is the hand of all" instruction. Id. at 884/18-22.

The State, without evidence, argues "hand of one is the hand of all" in closing argument.

Knowing that the trial court would charge "hand of one is the hand of all," the prosecutor, without evidence, argues accomplice liability to the jurors in her closing argument.

The State's jury argument regarding "hand of one is the hand of all" was confusing and misleading. For example, she says that "if they were acting together..." "hand of one is the hand of all" applies, which is a misleading definition of accomplice liability. Id. at 857/1-11. She then suggests that, since Mr. Dontell was originally charged with murder (a fact that was not in evidence), and he entered a guilty plea to conspiracy and accessory after the fact, the jurors could find that Mr. Dontell committed the murder and not the defendant; therefore, the defendant could be guilty under the theory of "hand of one is the hand of all:"

If you have any hesitation about that, then South Carolina has "hand of one, hand of all." If they were acting together -- and you heard that he had originally been charged with murder and criminal conspiracy and accessory after the fact, entered a plea with no agreements with the State to criminal conspiracy and accessory after the fact. So if you think, "Well, maybe Dontell did it and not the defendant," you go back to this "hand of one, hand of all" which says that it doesn't matter. Two people can be guilty of killing another when only one of them has a gun and only one of them fires a shot.

Id.

The State's misleading arguments regarding "hand of one is the hand of all" compounded the trial court's error in twice instructing the jurors on "hand of one is the hand of all," further emphasizing to the jurors that they could find Ms. Jackson guilty as an accomplice when there was no evidence that she acted as an accomplice.

The trial court directed a verdict on the conspiracy charge, precluding a later finding of “evidence of a prearranged plan.”

In directing a verdict of not guilty on the criminal conspiracy charge, the trial court found that the State presented no “evidence of a prearranged plan between this defendant and any other person... to commit the crime...” Trial Tr. 830/10 through 832/5.

Criminal conspiracy is statutorily defined as "a combination between two or more persons for the purpose of accomplishing an unlawful object or a lawful object by unlawful means." S.C. Code § 16-17-410 (2003); State v. Gordon, 356 S.C. 143, 588 S.E.2d 105 (2003); State v. Follin, 352 S.C. 235, 573 S.E.2d 812 (Ct.App.2002), State v. Horne, 324 S.C. 372, 478 S.E.2d 289 (Ct.App.1996).

“The gravamen of the offense of conspiracy is the agreement, or combination.” State v. Dasher, 278 S.C. 454, 298 S.E.2d 215 (1982); see also State v. Buckmon, 347 S.C. 316, 323, 555 S.E.2d 402, 405 (2001) ("The essence of a conspiracy is the agreement.").

As the trial court stated when directing a verdict of not guilty on Ms. Jackson’s criminal conspiracy charge, conspiracy requires “evidence of a prearranged plan between this defendant and any other person... to commit the crime...,” Trial Tr. 830/10 through 832/5, and the state presented no “evidence of a prearranged plan” at trial.

Just as evidence of a prearranged plan is required for a criminal conspiracy conviction, evidence of a prearranged plan is necessary for a conviction under a theory of accomplice liability. “Guilt as a principal is established by presence at the scene through prearrangement to aid, encourage, or abet in the perpetration of a crime.” State v. Jennings,

515 S.E.2d 107, 335 S.C. 82 (S.C. App. 1999), citing State v. Chavis, 277 S.C. 521, 290 S.E.2d 412 (1982); State v. Hill, 268 S.C. 390, 234 S.E.2d 219 (1977). "When several people pursue a common design to commit an unlawful act and each takes the part agreed upon or assigned to him in an effort to insure the success of the common undertaking, the act of one is the act of all and all are presumed to be present and guilty." Chavis, 277 S.C. at 522, 290 S.E.2d at 412 (quoting State v. Gilbert, 107 S.C. 443, 446, 93 S.E. 125, 126 (1917)).

When the trial court found, as a matter of law, that there was no prearranged plan and, therefore, the conspiracy charge could not proceed to the jurors, it also precluded the case from proceeding to the jurors based on accomplice liability.

Issue preclusion "prevents a party from relitigating an issue that was decided in a previous action." State v. Hewins, 409 S.C. 93, 106, 760 S.E.2d 814, 821 (2014). Issue preclusion applies in the criminal context as well as the civil and is a part of the protection afforded by the Double Jeopardy Clause of the State and Federal Constitutions. Id. at 106–07, 760 S.E.2d at 821 (citing State v. Brown, 201 S.C. 417, 23 S.E.2d 381 (1942)), Harris v. Washington, 404 U.S. 55, 56, 92 S.Ct. 183, 30 L.Ed.2d 212 (1971) ("[Issue preclusion] in criminal trials is an integral part of the protection against double jeopardy guaranteed by the Fifth and Fourteenth Amendments."). See also Ashe v. Swenson, 397 U.S. 436, 90 S.Ct. 1189, 25 L.Ed.2d 469 (1970) (the issue preclusion aspect of the Double Jeopardy Clause precludes the State from relitigating any issue of ultimate fact that was necessarily decided by a jury's verdict of acquittal in a prior trial).

Here, the trial court acquitted Ms. Jackson on the criminal conspiracy charge. The lack of an agreement between the parties was an issue that was necessarily decided by the

trial court in granting a directed verdict of acquittal, and it was an essential element of the criminal conspiracy charge, which the State then sought to re-prosecute as “hand of one is the hand of all,” for which an agreement between the parties was also an essential element.

The jurors’ only question is further evidence of the prejudicial effect of the “hand of one is the hand of all” instruction.

After about an hour and a half of deliberations, the trial court receives a note from the jury that says, “What classifies as ‘hand of one, hand of all’? What are the parameters? Does just being present at the scene of a crime classify as ‘hand of one, hand of all?’” Trial Tr. at 887/20-23. The trial court says, “All I know to do is just bring them back in and recharge them on ‘the hand of one is the hand of all,’ and we’ll go forward with that.” Id. at 887/24 through 888/1.

The Court then brought the jury out and recharged them on the law of “hand of one is the hand of all,” including the law of “mere presence,” over Ms. Jackson’s previous objections. Id. at 888-892. Approximately 14 minutes later, the jury returned a verdict of guilty. Id. at 892/18 through 894/15.

The trial court erred in denying Ms. Jackson’s Motion for New Trial.

Ms. Jackson timely moved for a new trial on the grounds that the trial court should not have charged “hand of one is the hand of all.” The trial court denied the motion following a hearing on February 19, 2026. See, Hearing Tr.

At the post-trial hearing, the prosecutor argued that “there was clear and direct testimony during the trial by the co-defendant, Christopher Dontell, that he pleaded guilty

to criminal conspiracy to commit murder. So, therefore, there was certainly undisputed testimony that there was a criminal conspiracy regardless of Your Honor's decision to grant a directed verdict on the criminal conspiracy charge. Christopher Dontell testified under oath that he pleaded guilty to criminal conspiracy to commit murder." Hearing Tr. at 8/24 through 9/7.

Mr. Dontell did not testify that he "pleaded guilty to criminal conspiracy to commit murder."

The jurors did not hear Mr. Dontell, or any other witness, say that Mr. Dontell was initially charged with murder. The jurors heard the prosecutor say it in her closing argument ("... and you heard that he had been originally charged with murder..." Trial Tr. 857/3-4), and then Ms. Jackson's closing argument ("He sat up here seven months ago and took a plea where he slithered his way out of a murder charge and he doesn't remember it," Id. at 865/3-5), a fact that was not in evidence.

At the post-trial hearing, the trial court asked the prosecutor again, "...what evidence is there that there was a 'hand of one, hand of all?'" Hearing Tr. 9/15-17. The prosecutor responds:

Because that was certainly the defense theory of the case. And all throughout their questioning and cross-examination of the State's witnesses, they made clear that their theory was that Christopher Dontell is the one who killed Gregory Rice.

So they raised the idea that the defendant was not the principal actor, and therefore, that allowed the State to say, "That's fine if that's the defense argument, then you are opening the door for a 'hand of one, hand of all' argument."

Id. at 9/22 through 10/5.

The trial court correctly states that, "I am to charge the law if there's any evidence to support that charge." Id. at 11/9. The evidence cited by the trial court, however, is 1) that "the theory of cross-examination was [Ms. Jackson] was not the triggerman," and 2) that Mr. Dontell pled to conspiracy:

All right. Well -- and I'm going to deny your motion, Mr. Brittain, because I think the theory of your cross-examination was your client was not the triggerman, so to speak, that it was Mr. Dontell. And so, therefore, I think there is evidence and the fact that it came out that he pled to conspiracy, as I understand, I am to charge the law if there's any evidence to support that charge.

Now, while the State's case was that Ms. Jackson was the one that pulled the trigger, there was evidence in the record through cross-examination, testimonial or whatever, that, no, she did not pull the trigger, that Mr. Dontell is the one that pulled the trigger. And so that's why I decided to charge the "hand of one is the hand of all," not because it was the State's theory of the case, but because, as I read the appellate decisions, if there's any evidence in the record to support a charge, then the judge should charge it. And that's why I did it.

Id. at 11/9-25.

The defense's theory of cross-examination is not evidence in the case. Mr. Dontell's guilty plea to conspiracy cannot be evidence that Mr. Dontell was also guilty of murder. When the trial court says, "there was evidence in the record through cross-examination, testimonial or whatever, that, no, she did not pull the trigger, that Mr. Dontell is the one that pulled the trigger," that is incorrect. There is no evidence in the record that Mr. Dontell pulled the trigger.

The trial court acknowledges that "... his pleading guilty to conspiracy is certainly not evidence against her. And there was nothing presented during the State's case other than him saying he pled guilty to conspiracy." Id. at 13/10-13. The trial court goes on to say, "There was no evidence of conspiracy. There was really no evidence presented by the State, as I can recall, that 'the hand of one is the hand of all.'" Id. at 13/24 through 14/1.

Nevertheless, the trial court denies the Motion for New Trial, saying that there are "numerous cases out there that says the judge should charge on the law if there's evidence to support it, and the fact that, even though a defense was not presented, the cross-examination questions certainly planted the seed that the defense was saying Mr. Dontell was the shooter and not her and she didn't know anything about it, because that's the way I recall the testimony, to make it clear that that's -- that's the reason I put it in there." Id. at 13/16-23.

Cross-examination questions that "planted a seed" are not evidence. The witness's responses to cross-examination questions are evidence, but the questions are not. No witness at trial testified or even implied that Mr. Dontell was the shooter.

As the trial court stated, numerous cases say the judge should charge the law if there is evidence to support it. A defendant is entitled, for example, to a charge on mere presence if the evidence supports it, but the converse is also true. A defendant (or prosecutor) is not entitled to a charge on mere presence or accomplice liability if the evidence does not support it. State v. Franklin, 299 S.C. 133, 382 S.E.2d 911 (S.C. 1989), citing State v. Kimbrell, 294 S.C. 51, 362 S.E.2d 630 (1987); State v. Shank, Op. No. 28328 (S.C. 2026) (where the evidence did not support a rational inference that Defendant was guilty only of the lesser-included offense, a court should not charge the lesser crime); State v. Sellers, 898 S.E.2d 116, 442 S.C. 140, 149 (S.C. 2024) (“If all the evidence indicates the defendant was the only shooter, the hand of one theory must not be charged.”); State v. Harry, 420 S.C. 290, 299, 803 S.E.2d 272, 276 (2017); State v. Washington, 431 S.C. 394, 848 S.E.2d 779 (2020); Barber v. State, 393 S.C. 232, 712 S.E.2d 436 (S.C. 2011).

The trial court’s charge and recharge of “hand of one is the hand of all” was not harmless error.

The jury’s verdict was likely based on their understanding of and their confusion regarding accomplice liability. The prosecutor gave them a confusing and inaccurate definition of “hand of one is the hand of all” in her closing argument, drawing the jurors’ attention to the improper jury instruction. The fact that the only question the jurors asked was about the definition of “hand of one is the hand of all” and whether someone can be guilty for “just being present at the scene of a crime,” Trial Tr. at 887/20-2, along with the fact that the jurors returned with a guilty verdict only 14 minutes after the trial court

recharged the law on “hand of one is the hand of all,” shows that the question was important to their verdict. Id. at 892/18 through 894/15.

II. Did the trial court err in admitting an entire Cellebrite extraction into evidence when the contents were not identified or reviewed by the trial court, and it was later revealed that it contains text messages about abortion, a photograph of a bottle of “Black Cohosh” which is sometimes used to induce miscarriages, a photograph of an aborted fetus, vulgar language, and nude photographs, including photographs of Ms. Jackson’s breasts and vagina?

The trial court’s admission of a gruesome photograph of what appears to be an aborted fetus, along with a photograph of an abortion drug and conversations attributed to Ms. Jackson about getting an abortion are reversible error. The prejudicial effect of these exhibits, as well as the graphic photographs of Ms. Jackson’s genitalia that were repeatedly shown to the jurors, is best analyzed in the context of our Supreme Court’s decisions regarding autopsy photographs shown during the guilt phase of a trial. See, e.g., State v. Nelson, 440 S.C. 413, 891 S.E.2d 508 (S.C. 2023).

As the Court stated in Nelson, “the State always must prove its case beyond a reasonable doubt; however, the photos here provided little probative value as to any element of murder. Therefore, we hold it was error to admit the photos because their minimal probative value was substantially outweighed by the danger of unfair prejudice.” Id. at 420, 512.

“[I]t is well-established that photographs calculated to arouse the sympathies and prejudices of the jury are to be excluded if they are irrelevant or unnecessary to the issues

at trial." State v. Jones, 440 S.C. 214, 259, 891 S.E.2d 347, 371 (2023) (quoting State v. Middleton, 288 S.C. 21, 24, 339 S.E.2d 692, 693 (1986)).

During Sgt. Marcus's testimony, the trial court admits exhibit 95, an entire Cellebrite extraction, into evidence over Ms. Jackson's objections.

During Sgt. Marcus's testimony, the trial court admits exhibit 95, an entire Cellebrite extraction, into evidence over Ms. Jackson's objections that "[t]here's thousands and thousands and thousands of pages being sought to be introduced through this witness. This is a Cellebrite extraction. It is incredibly voluminous. It is -- I object to them putting in an entire extraction from the phone. There's no telling how much information is in there. It's inappropriate, not relevant, massively prejudicial, potentially. I mean, there's no way for me to even know how much is there on, Your Honor." Trial Tr., 479/19 through 480/20.

Ms. Jackson suggests that the prosecutor could "show some portions of the extraction they want to use, or give us some general idea. But to put into evidence an entire extraction -- this could go back years." Trial Tr. 480/13-16.

At no time before the Court's ruling does the prosecutor inform the Court of the material contained in Exhibit 95, which includes:

- Text messages with hearsay statements from the Victim and from the co-defendant in this case, see Exhibits 98, 98A, and 98B, Cellebrite extraction report, (anonymous message to Erica Dontell that says, "... your husband has someone else pregnant... the girl that is pregnant is Meagan;" message from Chris Dontell that says, "I like to have sex with you. I make a point of avoiding Erica and she makes me sick. And I don't have sex with her... I didn't reject you in any way other than having to deal with

nasty gross balls that probably smelled like BO and asshole. I touched you. I kissed you”); Exhibits 99, 99A, and 99A2, Exhibits 99J and 99J2,

- Text messages that include vulgar language about sexual intercourse, see Exhibits 98, 98A, and 98B, Exhibits 99J and 99J2,
- Graphic photographs of Ms. Jackson’s breasts, see Exhibits 99D and 99D2,
- Graphic photographs of Ms. Jackson’s vagina, see Exhibits 99D and 99D2,
- Graphic and disturbing text messages about abortion, Exhibits 98, 98A, and 98B, Exhibits 99, 99A, and 99A2, Exhibits 99E and 99E2, Exhibits 99F and 99F2, Exhibits 99G and 99G2, Exhibits 99H and 99H2, Exhibits 99I and 99I2,
- A photo of a bottle of “Black Cohosh” which is used to induce abortion, Exhibits 99, 99A, and 99A2,
- Text messages regarding uncharged prior bad acts, including illegal fake identifications and illegal abortion, Exhibits 98, 98A, and 98B, Exhibits 99, 99A, and 99A2, Exhibits 99E and 99E2, Exhibits 99F and 99F2, Exhibits 99G and 99G2, Exhibits 99H and 99H2, Exhibits 99I and 99I2,
- A photograph that could be a female child without pants, Exhibits 98, 98A, and 98B, and
- A graphic photograph of what appears to be an aborted fetus that includes tiny legs and a little hand. Exhibits 98, 98A, and 98B.

There are multiple instances of each text message and photograph across multiple exhibits, so each inflammatory photograph or message is repeated and emphasized throughout the evidentiary record given to the jurors. The prosecutor does not inform the

court of the subject matter contained in Exhibit 95 (a flash drive containing the Erica Dontell Cellebrite extraction) when she is arguing for its admission or at any point during Sgt. Marcus's testimony, and she does not question Sgt. Marcus about the contents of Exhibit 95, either before or after the trial court has admitted it into evidence.

Later, during the testimony of Lt. Wells, the contents of Exhibit 95 become apparent when the prosecutor seeks to publish and admit to evidence individual excerpts from the contents of Exhibit 95 (Exhibits 98 through 98B and 99 through 99J). Trial Tr. 782/15 through 784/5.

III. Did the trial court err in admitting text messages about abortion, a photograph of a bottle of "Black Cohosh" which is sometimes used to induce miscarriages, a photograph of an aborted fetus, vulgar language, and nude photographs, including photographs of Ms. Jackson's breasts and vagina?

During the testimony of Lt. Wells, the trial court admits to evidence individual excerpts from the contents of Exhibit 95 as well as additional copies of the text messages about abortion, photos of the bottle of "Black Cohosh" which is used to induce miscarriages, a photo of an aborted fetus, vulgar language, and nude photographs, including photographs of Ms. Jackson's breasts and vagina.

The prosecutor first seeks to admit excerpts from Ms. Jackson's phone through Lt. Wells, which mostly consist of the same text messages and photographs found in Exhibits 99 et al. In Exhibits 100 et al, the text is more legible, and the photographs are blown up and easily viewable. As with material sourced from Exhibit 95 and made into individual Exhibits

99 et al, the excerpts taken from Ms. Jackson's phone and made into individual Exhibits 100 et al include:

- Text messages with hearsay statements from the Victim or from the co-defendant in this case, see Exhibits 100B and 100B2 through 100N and 100N2 (these exhibits contain continuing, overlapping screenshots of text messages that repeat multiple times because they are overlapping),
- Graphic photographs of Ms. Jackson's breasts, see Exhibits 100Q and 100Q2,
- Graphic photographs of Ms. Jackson's vagina, see Exhibits 100Q and 100Q2,
- Graphic and disturbing text messages about abortion, see Exhibits 100B and 100B2 through 100NM and 100N2 (these exhibits contain continuing, overlapping screenshots of text messages that repeat multiple times because they are overlapping),
- A photo of a bottle of "Black Cohosh" which is sometimes used to induce abortion, see Exhibits 100-O and 100-O2,
- Text messages regarding uncharged prior bad acts including illegal fake identifications and illegal abortion, see Exhibits 100B and 100B2 through 100N and 100N2 (these exhibits contain continuing, overlapping screenshots of text messages that repeat multiple times because they are overlapping),
- A photograph that could be a female child without pants, see Exhibits 100P and 100P2, 100Q and 100Q2, and
- A graphic photograph of what appears to be an aborted fetus that includes a placenta, tiny legs, and a little hand, see Exhibits 100R and 100R2.

When the prosecutor seeks to introduce Exhibits 100-A through S, which Lt. Wells testified were taken from Ms. Jackson's phone, Ms. Jackson objects again on grounds that "there's some pretty grotesque stuff in here." Id. at 757/10-11. The defense and the trial court then go through the exhibits.

The defense objects to "conversations about abortion. I think it's inflammatory..." relevancy, vulgar language, cumulativeness of the information (most of the photos and conversations are repeated 4-5 or more times each throughout the exhibits), conversations about abortion, photos of Ms. Jackson's vagina that "might be a little bit inflammatory," and a picture of balloon animals having sex. Id. at 757/7 through 762/20. The defense further objects because the prosecutor hasn't laid a foundation for the testimony, and objects under Rule 403. Id. at 762/15 through 765/9; 774/7-14. The trial court overrules the objections, admits all exhibits, and they are published to the jury one at a time.

During Lt. Well's direct examination, the prosecutor also seeks to publish and admit to evidence Exhibit 99, which contains thumbnails of the same prejudicial photographs, including the bottle of Black Cohosh. Trial Tr. at 21-24. The prosecutor argues that it is already in evidence as Exhibit 95 (the flash drive containing the entire extraction from Erica Dontell's phone). Trial Tr. at 782/15 through 784/5. The trial court then admits Exhibit 99 into evidence:

"MS. WALTER: So 99 is simply a portion of 95.

THE COURT: All right. I'll allow State's Exhibit 99 over Defendant's objection," Id. at 783/23-25. After the trial court admits Exhibit 99's subparts, 99A2 through 99J2, into

evidence at the prosecutor's request, the prosecutor publishes each exhibit to the jurors, one at a time. Id. at 784/7 through 790/7.

Out of the presence of the jury, Ms. Jackson objects to Lt. Wells' testimony about statements made by Chris Dontell including statements about Ms. Jackson's pregnancy, a statement about Ms. Jackson cutting someone's brake line, statements about Ms. Jackson's children, vulgar language about sex ("You do have a better or more cooperative dick when you're high"), vulgar language including Ms. Jackson calling her children "assholes," statements by the Victim arguing with Ms. Jackson, implying that she is a liar, and demonstrating that she lied to the Victim about leaving town with the children and when she was going to return with the children, and discussion of a probate case that the Victim says Ms. Jackson is lying about. Id. at 790/8 through 811/25. The defense objects at various points under the Rule of Completeness, Id. at 796/8-14, Rule 404 impermissible character evidence, Id. 798/11-24, and a second time under Rule 404, Id. at 800/18.

The trial court rules that the exhibits are admissible, subject to the prosecutor's redaction of conversations about the children, although the record is not clear as to exactly what language must be redacted. Id. at 804/9-11.

When the jury returns, the witness then continues reading text messages from the Victim and Ms. Jackson, including "you do have a better or more cooperative dick when you're high," that Ms. Jackson did not feed the children lunch, Ms. Jackson didn't care if the children ate lunch, one of the children pissed in a cup and had the dog drink it, and Ms. Jackson called the children "little assholes" and threatened to send them "to fucking boot camp," Id. at 804/12 through 811/25.

After Lt. Wells' testimony and before resting their case, the prosecutor seeks to admit Exhibits 99A through 99J "just as a housekeeping matter." *Id.* at 826/10 through 828/10. The trial court says, "I'm going to admit State's Exhibits 99-A through 99-J since State's Exhibit 99 is already admitted into evidence and these are just a portion of exhibit." Similarly, Exhibit 99 was admitted into evidence because it was simply an excerpt from Exhibit 95, which had been previously admitted into evidence when the trial court was unaware of its contents. *Id.* at 784/7 through 790/7.

The prosecutor repeatedly seeks to admit objectionable material without verbally identifying what it is, thereby placing the photographs and messages before the jurors without drawing attention to their contents and without identifying their contents for the transcript.

During Sgt. Marcus' testimony, the prosecutor seeks to admit the improper evidence without identifying its nature or purpose to the trial court:

1. Exhibit 145, Erica Dontell's cell phone, is admitted without objection ("THE COURT: Any objection? MR. P. BRITTAIN: To the device itself? No, sir, Your Honor."). *Trial Tr.*, 479/10-12, and then
2. Exhibit 95, a flash drive containing the entire Cellebrite extraction from Erica Dontell's cell phone, is admitted over Ms. Jackson's objections that it contained thousands of pages, including material that is "inappropriate, not relevant, [and] massively prejudicial..." *Id.* at 480/3-16. The contents of the flash drive are not revealed to the court during Sgt. Marcus' testimony - neither before nor after the trial court admits the flash drive into evidence.

The next day and several witnesses later, the prosecutor seeks to admit a series of larger images of the improper evidence and publish the images to the jurors, using the earlier admission of Exhibit 95 to buttress her arguments. These exhibits include:

3. Exhibits 100A and 100A1 through 100S and 100S1, which contain repeated photographs and some conversations, all of which are made larger, so they are easier to view and read. Id. at 757/7 through 762/20,
4. Exhibit 99, which contains thumbnail photographs that are difficult to see, and which the prosecutor repeatedly assures the trial court has already been admitted into evidence because it is only an excerpt from Exhibit 95. Id. at 782/14 through 783/25, and
5. Exhibits 99A and 99A1 through 99J and 99J1, also excerpts from Exhibit 95, which contain larger photographs and screenshots of conversations that you may have to squint to read.

The prosecution's theme at trial is to persuade the jurors that Ms. Jackson must be guilty because she is a promiscuous liar.

The prosecution's theme at trial is to persuade the jurors that Ms. Jackson must be guilty because she is a promiscuous liar.

From the outset, in the prosecutor's opening statement, she tells jurors that Ms. Jackson is a "deceiving" person and a "master manipulator." Trial Tr., 130/1-12.

But looks can be **deceiving**. And this defendant is certainly **deceiving**. She **deceived** Greg Rice. She **deceived** her co-defendant Christopher Dontell. She **deceived** Christopher Dontell's wife Erica Dontell. And she **deceived** law

enforcement. So as you're watching this, make no mistake: the defendant may look like a victim, or portray herself that way. She may look meek and mild, but she is a **master manipulator**, and that's what she did in this case. And not only is she a **master manipulator**, she was literally in the business of death.

Id. (emphasis added).

Ms. Jackson was also cruelly and unnecessarily sexualized throughout the trial. The multiple photographs of her breasts and vagina that were shown repeatedly in open court and then provided to the jurors are the most extreme example, but not the only one.

In her opening statement, the prosecutor tells jurors that Chris Dontell told the police that “he was receiving oral sex from Meagan, that that’s what they did when they were together.” Id. at 137/15-18.

The prosecutor elicits testimony from Ms. Jackson’s daughter that she knew about her mother’s affair because “we heard them having sex in the bedroom, and it just kept getting louder and louder.” Id. at 157/18-22. Ms. Jackson’s own attorney elicited testimony about Ms. Jackson having sex using a blow-up doll (“Is what’s on Meagan Jackson’s mind is sex... you would know that she was saying we can fool around with a Blow-up Betty; right?”) Id. at 539/23 through 540 /7.

During Chris Dontell’s testimony, the prosecutor questions Mr. Dontell in detail about his sexual relationship with Ms. Jackson, asking, “At some point did you and the defendant begin a sexual relationship?” Id. at 635/25 through 636/1, and, “How did that begin?” Id. at 635/3. When Mr. Dontell begins describing how he met Ms. Jackson and their relationship, the prosecutor interrupts to redirect him to talking about sex with Ms.

Jackson: “this was before your sexual relationship began?” Id. at 635/19. Mr. Dontell then describes in detail how Ms. Jackson came onto him and proposed that they have sex after climbing on top of him in his car, and how she was persistent, and how he eventually gave in. Id. at 635 through 636. The prosecutor continues to press Mr. Dontell, asking, “Would you say that the two of you were fairly sexually active with each other? Did you have sex a lot?” Id. at 637/1-2.

Ms. Jackson’s own attorney then continues on cross-examination, asking,

- “For a long period of time, several months, you were having sex with Meagan Jackson; right?”
- “All over the place, at your house and other places?”
- “You were having sex with both of them; isn't that true?”
- “Well, let's just say, how many times did you have sex with Meagan Jackson?”
- “Do you blame Meagan Jackson for having oral sex with you and other kind of things? Are you blaming her?”
- “Even after the way you have described these events of that night through your tears, you were still having sex with Meagan Jackson afterwards.”
- “Now, that takes a special man, doesn't it, to see the things you saw and cry all those tears and you go right back to having sex with her.”
- “Did you do your wife the courtesy of wearing a condom when you were having sex with Ms. Jackson?”
- “So you had unprotected sex with her and, as a result of it, there was a pregnancy.”

Id. at 678/8 through 701/12.

The prosecutor asks Lt. Wells to read to the jury conversations about sex, including, "I like to leave -- have sex with you. I make it a point of avoiding Erica, and she makes me sick. And I don't have sex with her." Id. at 745/10-15.

At the close of the trial, in her closing argument, the prosecutor continues her theme:

This is a tale as old as time, as you were told in the opening. It involved an affair, a pregnancy, and a murder. But there was a fourth aspect of this case that is equally as important, and that's **deception**. The defendant was the center of the affair, certainly the pregnancy, and most definitely the murder. But the evidence has also shown that she was the center of the **deception**. In fact, she is a **master of deception**; I guess the correct term would be **mistress of deception**, but **master of deception** is a little bit more common.

Id. at 845/14-23 (emphasis added).

And so that's what -- he continually caught her in **lies**: You told me you were going to be home yesterday. You told me you had a court date. I'm tired of all these **lies**. 25 So the storm was to expose the **lies**. "*I don't trust* a word you say. Everything is always riddled with **half truths** and **lies**. So I'm going to start letting people know the truth," not "I'm going to kill you, I'm going to hurt you." It's, "You **lie** to me, and **your lying** to me affects my life and people need to know that **they can't trust what you are going to say**."

Id. at 847/22 through 848/6 (emphasis added).

The problematic exhibits, lines of questioning, and arguments discussed above don't appear to be calculated to achieve a guilty verdict based on evidence of murder. They

appear to be calculated to achieve a guilty verdict based on various improper theories calculated to evoke emotion, including photographs that graphically sexualize Ms. Jackson and make her appear promiscuous, extensive conversations in text messages showing that Ms. Jackson is a dishonest person or an evil person, and photographs of 1) a bottle of Black Cohosh 2) an aborted fetus and 3) conversations about abortion all attributed to Ms. Jackson.

Graphic photographs – even autopsy photographs – may be admissible if they have probative value and if that probative value outweighs the prejudicial effect of the photographs.

At various times, the prosecutor argues to the trial court that the images and text conversations are relevant because they “show her familiarity with building collages which are relevant in another exhibit.” Trial Tr., 760/15-21. “Your honor, some of these images appear in other collages that are relevant in a later exhibit.” Id. at 761/24-25.

The prosecutor wanted to show that the images retrieved from Erica Dontell’s phone related to an anonymous message (including photographs of Ms. Jackson’s genitalia, an abortion drug, conversations about having an abortion, and an aborted fetus) were the same as the images retrieved from Ms. Jackson’s phone (including additional repeated photographs of Ms. Jackson’s genitalia, an abortion drug, conversations about having an abortion, and an aborted fetus) to demonstrate that Ms. Jackson, and not the Victim, sent the anonymous email to Erica Dontell.

The prosecutor could have sought to admit only the non-objectionable material from each of the phones, or the trial court could have ordered the prosecutor to redact only

the non-objectionable material from each exhibit, and this would have satisfied any need to connect Ms. Jackson's phone with the messages received by Erica Dontell. Instead, the prosecutor showed the jurors blown-up images including Ms. Jackson's genitalia, a bottle of Black Cohosh, conversations about abortion, and an image of an aborted fetus in Exhibits 100A-100R, 100A1 to 100R1, 99, 99A-99J, and 99A1- 99J1. Many of the objectionable photographs were published and placed before the jury four times or more during Lt. Wells' testimony. In the jury room, the jurors had multiple copies of the photographs contained in the "excerpt Exhibits" as well as the entire contents of Exhibit 95, Erica Dontell's Cellebrite extraction.

As in State v. Nelson, 440 S.C. 413, 891 S.E.2d 508 (S.C. 2023), "the photos here provided little probative value as to any element of murder." Id. at 420. In this case, the photographs provided *no* probative value as to any element of murder, and little probative value as to the tangential issue of who sent the anonymous email. The inclusion of the prejudicial photographs and conversations was not required to establish a link between the two phones. And establishing a link between the two phones, although it provides evidence to support the prosecutor's theme that Ms. Jackson is a promiscuous liar, does not tend to establish any element of murder in this case.

These exhibits were calculated to arouse the sympathies and prejudices of the jury, and they are irrelevant to or unnecessary to the issues at trial; therefore, they should have been excluded by the trial court. State v. Jones, 440 S.C. 214, 259, 891 S.E.2d 347, 371 (2023) (quoting State v. Middleton, 288 S.C. 21, 24, 339 S.E.2d 692, 693 (1986)).

In Middleton, the Court reversed, finding that “autopsy photographs showing a victim's scalp pulled away from her skull and the victim's vaginal cavity containing semen” should have been excluded. Middleton, 288 S.C. at 24, 339 S.E.2d at 693.

In reaching this finding, this Court noted the appellant offered to stipulate to the facts shown in the photos, but the State refused to accept the stipulation. Id. On appeal, the State argued the photos were properly admitted to corroborate forensic testimony, demonstrate the violent nature of the murders in this case, and to corroborate the appellant's statements, but the appellant argued the photographs did not contain disputed information and this information could have been proven by other evidence. Id. The State admitted the photos "were not essential to the prosecution." Id. In reversing, this Court noted appellant's offer to stipulate to the facts in the photos, that the information in the photos were not in dispute, and that the forensic pathologist's testimony "negated any arguable evidentiary value of the photographs." Id. Thus, this Court held, "[t]he prejudice created by the photographs clearly outweighed any evidentiary value." Id.

State v. Nelson, 440 S.C. 413, 421, 891 S.E.2d 508, 512 (S.C. 2023). As in Middleton, the state here cannot credibly argue that photographs of Ms. Jackson’s genitalia and an aborted fetus are “essential to the prosecution” of the murder charge.

As in Middleton, the prejudicial exhibits in this case were related to a tangential issue, they did not tend to prove any of the elements of murder, the connection between the phones could have been proven by other evidence, and the prejudice created by the photographs clearly outweighs any evidentiary value.

Similarly, in State v. Haselden, 353 S.C. 190, 577 S.E.2d 445 (2003), the Supreme Court held that the admission of a photograph of a victim's dilated anus was error because it "did not go to the circumstances of the crime, the characteristics of the defendant, nor to the existence of aggravating circumstances ... [t]he sole purpose of the photo was to insinuate that perhaps there was sexual abuse when, in fact, there was absolutely no evidence of such an assault"). Id. at 201. It is notable that the photographs in Haselden were admitted during the sentencing phase of trial, where the standard for admission is more relaxed. As in Haselden, the photographs in this case did not tend to prove the murder. Instead, the sole purpose of the photographs and text messages is to insinuate that Ms. Jackson is a liar, that she is promiscuous, and that she killed a fetus, none of which are proper bases for a murder conviction in this case.

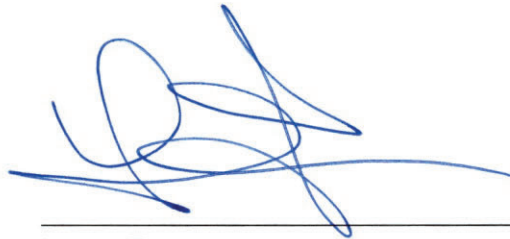
When evidence has "an undue tendency to suggest a decision on an improper basis," the evidence should be excluded. State v. Holder, 676 S.E.2d 690, 697, 382 S.C. 278, 290 (S.C. 2009), citing State v. Jackson, 364 S.C. 329, 334, 613 S.E.2d 374, 376 (2005) (quoting State v. Alexander, 303 S.C. 377, 382, 401 S.E.2d 146, 149 (1991) ("To constitute unfair prejudice, the photographs must create an undue tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.")).

The exhibits in this case are calculated to suggest a decision on improper bases, including that Ms. Jackson must be guilty because she murdered a baby, that Ms. Jackson must be guilty because she is promiscuous, or that Ms. Jackson must be guilty because she is a liar, and they are calculated to evoke strong emotions by showing images of Ms.

Jackson's genitalia, an abortion drug, and an image of an aborted fetus which appears to be a placenta with tiny legs and a tiny arm with a tiny hand emerging from the remains.

CONCLUSION

Based on the above arguments, Ms. Jackson asks this Court to reverse her conviction and remand this case for a new trial.



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