

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM DORCHESTER COUNTY  
Court of General Sessions  
Court of Common Pleas

Dianne S. Goodstein, Circuit Court Judge  
Deandra G. Benjamin, Circuit Court Judge

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Case No. 2011-CP-18-1497

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Tiffany Sanders, ..... Appellant,

vs. .

State of South Carolina ..... Respondent,

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APPELLANT'S REPLY BRIEF

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December 27, 2013

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Dale T. Cobb #1291  
Thomas R. Goldstein #2186  
Belk, Cobb, Infinger & Goldstein, P.A.  
Attorneys for Appellant  
P. O. Box 711121  
N. Charleston, South Carolina 29415-1121  
(843) 554-4291(843) 554-5566 (fax)  
E-mail: [tgoldstein@cobblaw.net](mailto:tgoldstein@cobblaw.net)  
ATTORNEYS FOR APPELLANT

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S.C. SUPREME COURT

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**S.C. SUPREME COURT**

**REPLY TO RESPONDENT'S STATEMENT OF FACTS**  
**(TRIAL)**

The State does an excellent job summarizing the facts on pages 3-7 of its brief, but what is most striking about the State's recitation of the facts is what is missing. What are missing are two essential facts that compel a reversal of the charge of murder. While it is indisputable that the Defendant transported the victim the scene of his murder, it is likewise indisputable that not one witness in this case testified that he knew the confessed killer, Sean Kammerer, possessed a pistol on the night of this senseless killing. Every witness on the scene was shocked when Sean Kammerer produced a pistol sometime after the Appellant drove the victim to the scene. The eyewitness to the shooting, Jessica Han, is crystal clear that she saw one Jeep Cherokee—the vehicle belonging to Sean Kammerer's mother and driven by his friend, DeJuan Jenkins. For the Court's convenience, it is essential to recall that the State's entire case consisted of seven witnesses as follows:

1. Detective David Watson
2. Kevin King
3. David Hughey
4. Brandon Frye (friend of Sean Kammerer and driver of Jeep Cherokee)
5. Jessica Hans (Publix store manager, eyewitness to shooting, presently N. Charleston detective)
6. DeJuan Jenkins
7. Detective James Sturkie

On the day of the murder, DeJuan Jenkins had been with Sean Kammerer all day. He drove him to the scene of the crime. The State charged Jenkins with accessory after the fact

of murder, to which he plead guilty, for the indisputable reason that the only one on the scene, who knew Sean Kammerer possessed a gun was Sean Kammerer. Here is how Dejuan Jenkins described the events leading up to the critical time of the murder:

Q. Did you see him with the gun before y'all got to the Tire Kingdom parking lot?

A. No, sir.

Q. When's the first time you saw him with a gun?

A. When he went out there shooting with it?

Q. Did you give him a gun?

A. No, sir.

Q. Do you know where he got the gun from?

A. No, sir.

Q. Did he have it when he got back in the Jeep?

A. Yes, sir.

Appendix, page 204

There is not a *scienter* of evidence in this entire record that Tiffany Sanders knew Sean Kammerer possessed a gun. The accomplice Sean Kammerer spent the day with did not know Kammerer possessed a gun.

Likewise, in summarizing the facts, the State glosses over the fact that the eyewitness, now a North Charleston Police Officer, Jessica Hans saw the shooting. Of all of the witnesses on the scene, she is by far the most credible, and she testified she saw Sean Kammerer shoot Jessie Ham, her attention drawn to the act by the sound of the first shot. She saw two culprits flee the scene. Here is her eyewitness testimony:

Q. And subsequent to that [leaving Publix for the night], did you notice anything or after that?

A. Yes, sir. After I walked to my car, another employee and I stood in the parking lot for a few minutes. We were talking about work and other things. Some point between 11 and 12, I'm not sure the exact time, we heard several loud pops. I thought they might have been fireworks. I'm not 100 percent positive. But at some point my attention was drawn across the parking lot to the Papa John's/Tire Kingdom area, which is on the other side, which is where I actually continued to see a person standing—standing pointing at the ground.

Eventually he actually fired a gun. There was another shot, I'm not sure if it was one or two, but fired another shot. There was another person that was standing with that person that ran between the two buildings, because Publix is separate from Papa John's and Tire Kingdom.

After that shot was fired, the person who actually held the gun in their hand ran to the other side of Tire Kingdom, which was even further away. They disappeared behind the side of the building between Tire Kingdom and the woods.

About 30 seconds later, a Jeep Cherokee pulled out from the side of the building, pulled out through the parking lot and turned left onto the little side street that is between the parking lot and the other restaurants that are right there; and sped off in the direction opposite from where we were in the parking lot.

Q. Okay. The person you said you saw first running, where were they running to?

A. They ran from—what looked to me to be in front of Papa John's, they ran between the two buildings. Between—Publix is in one building with a couple of other stores, and then

Papa John's and Tire Kingdom are in another building. And they ran—that other person ran between those two buildings.

That was not the person who fired the shot, though. That was a different person. The person who fired the shot ran to the other side of Tire Kingdom.

. . . .

Q. Were there any other vehicles down at that end of the parking lot or in that area that you noticed?

A. I don't remember at that time seeing any other vehicles. Prior to noticing the incident, the girl I was talking to, we noticed a Papa John's truck drive through the parking lot. Other than that I didn't notice any at the time.

Once we drove over there to see if anybody was hurt, there were some other cars just randomly parked in the parking lot. But nothing that I noticed during the whole incident until after we got over there.

Q. Did you see where the Papa John's truck went to?

A. It went between the two buildings. After that I'm not sure. I assume it might have—was loading—delivering for Papa John's. But once it disappeared between the buildings, I'm unsure.

Q. Okay. And when you rode over to that area, did you see anything?

A. Once we drove over there, we noticed a man lying on the ground. If you're looking at the building, he was actually to the right of Tire Kingdom.

He was lying on his back on the ground. I believe he was wearing a white shirt, and you could see the red blood on his shirt.

So, we pulled into a spot and that's when we called—I dialed 911 actually.

Q. And you talked to the police at that time?

A. Yes, sir.

Appendix Volume II, pages 195—198 (emphasis added)

This is critical testimony and central to the entire case. Jessica Hans indisputably establishes that at the time of the shooting, there were only two persons present: Sean Kammerer and his driver, DeJuan Jenkins. There is no evidence anywhere in the record from any witness that Tiffany Sanders knew Sean Kammerer possessed a gun or was present at the time of the shooting. Since there is no evidence she knew Sean Kammerer possessed a gun, and since there is no evidence in the record that she was present at the time of the shooting, the lower court erred in submitting the charge of murder to the jury. The jury was left to speculate that Tiffany Sanders knew that Sean Kammerer was lying in wait with a gun without a shred of evidence to support such speculation.

#### **REPLY TO ARGUMENT I**

**The lower court erred in failing to direct a verdict because there is no evidence in the record to support a charge on accomplice liability.**

The trial court's charge on accomplice liability is found in the Appendix, Volume II at pages 288—290, and the trial court correctly charged that:

A principal in a crime is one who is either actually committing or commits the crime, and 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, that act is done by both. Where two or more, acting with a common plan or intent, are present at the commission of that 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 a 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.

Appendix, Volume II, pages 289-290

The sole evidence, as argued by the State in its brief, of Tiffany's intent, malice, and common plan is the petitioner's written, uncounseled statement, entered into evidence as Court's Exhibit 2 and found in the Appendix, Volume II at pages 342—344. (Court's exhibit 2 at pages 342—344 is the same document as State's Exhibits 6 and 7 at pages 338—340.)

Since the State concedes its entire evidence of malice, intent, and presence is contained in these 205 words, it is important to examine them carefully. The statement, given while in police custody and without a lawyer approximately 12 hours after the murder states:

This statement / Riding around with my sister. My parents called Said they was almost home Rode to my neighborhood Was riding through Seen Brandon, David, Jessi, & Kevin. I knew David & Brandon before. Shawn calls and asks who I'm with. Then asks me to bring Jessi up to Publix. Kevin, Jessi, my sister, & I ride to Publix Kevin & Jessi wanted to get out of the car and as soon as they did Shawn ran up to Kevin pushed him & Jessi wanted to get out of the car and as soon as they did Shawn ran up to Kevin pushed him & Jessi screamed drive and I took off & went to Brandon's house got Brandon went back up there to see if they ducked in the woods. I had no knowledge of a gun until I hear the shot after me & Brandon didn't see anyone Brandon said alright you can take me home I dropped Brandon off and went home. Tried to call Shawn no answer. I had no knowledge of a gun being present to take a life the only knowledge that I had was Shawn wanting to fight Jessi because of Jessi beating Shawn in the head with a baseball bat. If I had known guns would have been involved I would have kept Jessi & Kevin at Brandon's house.

Written statement of Tiffany Sanders, Appendix Vol. II, pages 338—340

There is not a *scienter* of evidence in this written statement that hints, let alone proves, that Tiffany Sanders knew anything other than there might be a confrontation

between two high school boys who disliked one another and had a continuing feud. Because the facts of this case are so tragic, the lower court invited the jury to speculate about what may or may not have been in Tiffany Sander's mind at the time of the shooting. Looking at the evidence in the light most favorable to the State as the party resisting a motion for directed verdict, the best that can be said for the State's evidence is that Tiffany Sanders gave Jessi Hamm a ride to what she thought might be a fistfight. It is an enormous and impermissible and illogical leap to jump from an inference that a high school feud would escalate to murder. According to Tiffany's written statement, which the State relies on for its critical evidence, "Jessi wanted to get out of the car." (Appendix Vol. II, page 339) There is not a shred of evidence from any witness at any point in this trial that suggests, let alone proves, that Tiffany Sanders knew or even suspected that Sean Kammerer was lying in wait with a gun. Therefore, because there is no evidence in this record of malice, of intent, or even of presence, the lower court erred in submitting the case to the jury and should have directed a verdict on the charge of murder as a principal.

## **REPLY TO ARGUMENT II**

**The lower court erroneous charge on accomplice liability prejudiced the Appellant and prevented her from receiving a fair trial.**

Relying on Rule 208, the State claims that the Appellant incorrectly frames the issue. The State claims that the Appellant's statement of issue on appeal does not "match" the argument. The Appellant's statement of issue on appeal, at page 4 of her brief says: "Did

the trial judge err in failing to instruct the jury that the killer's malice cannot be transferred to the appellant without some evidence that the appellant demonstrated malice?" As demonstrated above, the record in this case is silent as to any malice flowing from Tiffany Sanders to Jessi Hamm. The best that the State can say about the evidence is that Tiffany Sanders tricked the victim into going to a fistfight. However, as the evidence relied on by the State demonstrates, Jessi Hamm wanted to get out of Tiffany Sander's car and confront the assailant.: "Jessi wanted to get out of the car and as soon as they did Shawn ran up to Kevin pushed him & Jessi screamed drive and I took off & went to Brandons house got Brandon went back up there to see if they ducked in the woods." (Appendix at page 343)

As set forth in the Appellant's brief on pages 17-21, the lower court sealed the Appellant's fate when it told the jury it could find the Appellant guilty of accessory if it found she intended to participate in "any crime." The Appellant's trial counsel timely objected to this instruction, which the trial court overruled on the ground that the "any crime" applied only to the accessory indictment and not the murder indictment. This is the same argument the State makes now. The problem with the lower court's ruling and the State's argument is that it overlooks logic. As every experienced trial judge and trial lawyer knows, the thorniest journey through any trial—civil or criminal—is in the delicate transition of power when the trial judge hands the case off to a jury to be decided. In evaluating this phase change, it is important to place the jury's instructions in context. For example, State decided to charge Sean Kammerer's driver, DeJuan Jenkins with accessory after the fact of murder, to which he plead guilty and received a youthful offender's sentence of one year. Dejuan Jenkins spent the entire day with the murderer, and even he had no idea Sean Kammerer possessed

a gun and was planning to shoot anyone:

Q. Did he ever say, "Me and you and Tiffany are going to get together and kill Jessie Ham?"

A. No, sir.

Q. Did her ever tell you, "I want you to drive me someplace, because I'm going to get out and shoot a gun and shoot somebody?"

A. No, sir.

Q. I mean, isn't it the truth—isn't it the truth, what you're telling this jury, that when you drove him up there and y'all parked and he got out, the first you knew of any kind of gun was when he pulled it out of his pocket and started shooting it?

A. Right.

Q. Were you scared?

A. Yes, sir.

Q. You said you were shocked?

A. Right

Q. You didn't see a gun in his pocket?

A. No, sir.

Q. He didn't pull it out while y'all were riding around that day, "Look at this right here, and look at this gun?"

A. No, sir.

Q. None of that, right?

A. No.

Q. All right. Did he ever say anything to you about how he and Tiffany were trying to set up some kind of an ambush to kill Jessie Ham?

A. No, sir.

Q. Now, you—you did plead guilty to accessory after the fact, because you did in fact see Sean Kammerer shoot Jessie Ham to death, let him get in the car, and drove him back to his house?

A. Yes, sir.

Q. Didn't call the cops?

A. No, sir.

Q. And you pled guilty and got a youthful offender, did you, a year/13 months?

A. Yes, sir.

Appendix, Volume II, pages 208-210 (See also Stipulation read to the jury by the trial judge at page 285: "DeJuan Jenkins drove Sean Kammerer to the scene and away from the scene, and was convicted by his plea to accessory after the fact.")

Thus, it is inescapable that the closest accessory to this crime was DeJuan Jenkins, and he had much more information about the plan to ambush Jessie Ham than did anyone else. The State cannot deny that the trial judge informed the jury of both charges simultaneously and blurred them in her charge:

THE COURT: Now, ladies and gentlemen, we are going to first of all talk about

accessory before the fact of felony. This—the felony here being murder. And once we have talked about that offense, then we're going to talk about murder. So, to give you an overview we're first going to talk about accessory before the fact to murder and then we're going to talk about murder.

Appendix, Volume II, page 286

Two pages later comes the erroneous charge that sealed the Appellant's fate:

THE COURT: Ladies and gentlemen, I'm now going to charge you with the theory called "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.

Appendix, Volume II, page 288 (emphasis added)

Thus, when the trial judge informed the jury that the Appellant could be found guilty of murder if the jury found she joined with him to commit any unlawful act, the trial court blended the crime of accessory with the crime of murder, and prejudiced the Appellant. As discussed fully in the Appellant's Brief, there is no evidence in this record of malice or intent, and there is certainly no evidence of a combination to commit murder. These elements must be proven, not suggested, and not one witness uttered a single syllable supporting any of them.

The trial court did not charge the jury in a vacuum; instead, she blended the elements of accessory with the elements of murder in such a fashion that the jury could not help but draw the conclusion that if Tiffany Sanders knew anything bad was going to happen at the meeting between Kammerer and Ham, then she knew Kammerer intended to murder Ham. It is on this basis that the jury convicted her, and it is on this basis that she is now confined to imprisonment for a term of 30 years without a shred of evidence to support a jury's finding that she participated in a murder. As the State correctly says: "Under an accomplice liability theory, 'a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some over act.'" (Respondent's Brief at page 9, quoting *State v. Langley*, 334 S.C. 643, 515 S.E.2d 98 (199) and *State v. Austin*, 299 S.C. 456, 459, 385 S.E.2d 830, 832 (1989). Since both parties agree that these cases set forth the correct charge on accessory liability, it is instructive to look at the approve charge and see just how different it is from the case before the Court. In *Austin*, this Court approved the following charge:

**[A] principal in a crime is one who either in person perpetrates the crime or who being present aids, abets and assists in the commission of that crime. When one does an act in the presence of and with the assistance of another, the act is done by both. And where two or more, acting with a common design or a common intent, are present at the commission of a crime, it matters not by whose immediate agency that crime is committed because all would be guilty. Intent however, ladies and gentlemen, is 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.**

*State v. Austin* at page 832. (emphasis added)

Thus, the lower court erred in instructing the jury on accomplice liability, and the Appellant's trial counsel timely objected. The trial court should have instructed the jury correctly, and the failure to do so was a palpable error of law and greatly prejudiced the Appellant because this record is completely silent as to any evidence of the critical elements of presence, common intent and common design.

### **Conclusion**

The Appellant is serving a 30-year sentence for the murder of Jessie Ham. Yet it is undisputed that she was not present at the time of the shooting. She admitted driving Jessie Ham to the place where Sean Kammerer murdered him. Beyond that undisputed fact, there is no evidence in the record to support even the suggestion that Tiffany Sanders was participating in a plan for murder. Even DeJuan Jenkins, who spent the entire day with Sean Kammerer and stood by his side as he fired the fatal shots, testified he was unaware of a plan to murder. It is unconscionable that DeJuan Jenkins served a 12 month youthful offenders sentence for driving Kammerer to and from the scene and failing to notify law enforcement, while Tiffany Sanders serves a 30-year sentence for accomplice murder. The trial court failed to inform the jury properly, and this failure caused great prejudice to the Appellant. Her conviction should be reversed, and the case should be remanded for a new trial.

Respectfully submitted,

December 27, 2013



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Dale T. Cobb, Jr.  
Thomas R. Goldstein  
BELK, COBB, INFINGER & GOLDSTEIN, P.A.  
Post Office Box 71121  
Charleston, SC 29415-1121  
(843) 554-4291  
Attorney for Appellant

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