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W. James Hoffmeyer
Attorney at Law

November 13, 2014

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

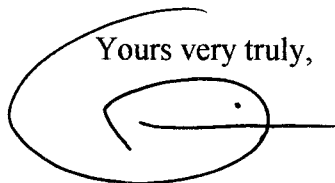
RE: *State of South Carolina v. Darryl Wayne Moran*
Case No. 2011-GS-33-113
Our File No. 14-444-C

Dear Ms. Kitchings:

Enclosed please find a copy of the sentencing sheet in this matter, along with the Order Denying the Motion for New Trial. We have sent a copy of this Order, along with the Motion for New Trial, the State's Reply to the Motion, and our Response to the State's Reply to the Office of Appellate Defense who has taken over the case. Kimberly McCall with the South Carolina Commission on Indigent Defense's Appellate Division has been in communication with us about their taking the case over, and I am sure they may have notified you. Given you requested this information, I wanted to go ahead and send it on behalf of Mr. Banner and myself.

With kind regards, I am,

Yours very truly,

A handwritten signature in black ink, consisting of a large, stylized 'W' followed by a horizontal line and a dot, all enclosed within a large, loopy oval shape.

W. James Hoffmeyer

WJH/~~fb~~
Enclosures

Cc: Darryl Moran (c/o Samantha Jones)
J. David Banner, Esquire
Fitzlee H. McEachin, Esquire
Kimberly McCall, Esquire

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SC Court of Appeals

COUNTY OF Marion
STATE VS.
Darryl Wayne Moran
AKA:
Race: White Sex: M Age: 46
DOB: SS#:
Address:
City, State, Zip: Marion, SC 29571
DL#: SID#:

INDICTMENT/CASE#: 2011-GS-33-0113
A/W#: M395835 A CERTIFIED COPY OF THE ORIGINAL FILED IN THIS OFFICE
Date of Offense: 10/1/2009
S.C. Code § : 16-17-0410
CDR Code #: 0049

SENTENCE COURT, MARION COUNTY SOUTH CAROLINA

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was TO: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

CONVICTED OF or PLEADS

in violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS
Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: McEachin, Fizzle H Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of 2 days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 3

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 1 day
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-23 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

PTUP
days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

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Table with columns for description, amount, and total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114(BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$3.90, TOTAL \$133.90

No contact directly or indirectly with victim.

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Sherry R. Rhodes
Court Reporter: Krystal Smith
SCCA/217 (03/2011)

Presiding Judge Judge Code: 2700
Sentence Date: 8-5-14

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF MARION) INDICTMENT NO.: 2011-GS-33-0113
)
 State of South Carolina,)
)
 -vs-) **ORDER DENYING DEFENDANT'S**
) **MOTION FOR A NEW TRIAL**
 Darryl Moran)
)
 Defendant)

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 SC Court of Appeals

This matter originally came before the court during the week of August 4, 2014, when the Defendant, Darryl Moran ("Moran"), was tried before a jury in Marion County, South Carolina on one count of Solicitation to Commit a Felony and one count of Conspiracy. Moran was tried with a Co-Defendant, James Herring ("Herring"), who was charged with one count of Solicitation to Commit a Felony. After the State's case-in-chief, Moran made a Motion for Directed Verdict on both counts, arguing that there was insufficient evidence for the case against him to go to the jury. This Court denied his Motion for Directed Verdict and sent the case to the jury. After meaningful deliberation, the jury returned not guilty verdicts on the Solicitation to Commit a Felony charges as to both Defendants, and a guilty verdict on the Conspiracy charge against Moran. Moran was then sentenced to two (2) years in the South Carolina Department of Corrections.

This present matter came before the court on August 11, 2014 upon Moran's timely Motion for a New Trial. He argues that there was insufficient evidence of a conspiracy and as such, he should have been granted a Directed Verdict. Furthermore, Moran argues that because he was found not guilty of Solicitation to Commit a Felony at the same trial, his conviction for Conspiracy is inconsistent and cannot stand.

LAW

In ruling on motions for directed verdict and JNOV, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions and to deny the motions where either the evidence yields more than one inference or its inference is in doubt. Creech v. S. Carolina Wildlife & Marine Res. Dep't, 328 S.C. 24, 28-29, 491 S.E.2d 571, 573 (1997). When ruling on a criminal Moran's motion for a directed verdict, a trial court is concerned with the existence of evidence, not its weight. State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998)(citing State v. Long, 325 S.C. 59, 480 S.E.2d 62 (1997)). If there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused or from which guilt may be fairly and logically deduced, the case should be submitted to the jury. State v. Johnson, 334 S.C. 78, 512 S.E.2d 795 (1995).

"The common law crime known as 'conspiracy' is defined as a combination between two or more persons for the purposes of accomplishing an unlawful object or lawful object by unlawful means." S.C. Code Ann. § 16-17-410. "In criminal conspiracy, it is not necessary to prove an overt act. The gist of the crime is the unlawful combination. The crime is then complete, even though nothing further is done." State v. Grueling, 257 S.C. 515, 523, 186 S.E.2d 706, 709 (1972). To prove conspiracy it must be shown that "one or more of the parties engaged in the conspiracy have committed some act to effect the object as alleged in the indictment." Ralph King Anderson, Jr.'s 2007 South Carolina Requests to Charge – Criminal § 2-40. "Once the agreement has been reached, the crime of conspiracy has been committed ... [t]he actus reus of conspiracy is the agreement, the evidence must prove the agreement, not the object thereof." State v. Crawford, 362 S.C. 627, 691, 608 S.E.2d 886, 893 (Ct. App. 2005).

ANALYSIS

Moran argues that there was no direct or substantial circumstantial evidence that would have reasonably tended to prove his guilt and thus he was entitled to a Directed Verdict as to the Conspiracy charge. Furthermore, although Moran acknowledges that no overt act is necessary for the crime of Conspiracy, Moran argues that an act is required for a finding of guilt on the charge. Here, he argues that there was no evidence of any act on his part in regards to the crime of Conspiracy.

During the State's case, the Solicitor elicited testimony from several witnesses to establish Moran's guilt as to the Conspiracy charge. First, Jenny Rabon, the girlfriend of the victim, Randy Parrot, who was also the ex-wife of Moran, testified that she and Moran separated in May 2009. After living in an apartment for a time, Ms. Rabon began living with the victim. Ms. Rabon testified that subsequent to the separation, she encountered Moran's friend and co-Defendant Herring in multiple locations, including her work place, her apartment complex's parking lot, and an open house that she was hosting. She stated that Herring had no reason to be at any of these locations.

Moran's stepson, James Carlyle Rabon, Jr., testified that he moved into Moran's home after his parent's separation. Mr. Rabon testified that during this time, Moran found out where Ms. Rabon was living and that he Moran, along with another individual, traveled to that location. Once there, the three hid in the woods and surveyed the property all night and into the next morning. Mr. Rabon also testified that while living in Moran's home, he overheard a conversation between Moran and Herring, wherein he heard statements made by Moran along the lines of "how much would it cost" and "would he take less". Mr. Rabon testified that Moran also asked him where he could obtain a gun silencer and if he knew anyone that could "F***

Randy (victim) up". Mr. Rabon testified that he left the house the day following the conversation because he understood the conversation to mean that Moran wanted to hurt Mr. Parrot.

The jury further heard testimony from Keith Caulder. Mr. Caulder testified that Herring approached him at his home and asked him if he would kill someone for \$3000. Caulder also testified that the killing should be made to look like a robbery.

CONCLUSION

After reviewing the testimony, both parties' submissions, and the applicable case law, this court finds that Moran was not entitled to a Directed Verdict on the Conspiracy charge. Although the court does agree that there was not an overt act in this case, the court finds that the testimony provides both direct and circumstantial evidence of a conspiracy from which the Jury could have determined guilt. The Jury, taking all the testimony and evidence into consideration, could reasonably have found that Moran conspired with Herring to harm Mr. Parrot. As such, Moran was not entitled to a Directed Verdict and is not entitled to a New Trial.

Furthermore, Moran argues that he is entitled to a new trial because his not guilty verdict on the Solicitation charge precludes a finding of guilt on the Conspiracy charge. This court finds that a finding of guilt on the Conspiracy charge and a finding of not guilty on the Solicitation charge does not make the verdicts inconsistent. Solicitation to Commit a Felony requires the actor, with the intent that another person commit a crime, have enticed, advised, invited, ordered or otherwise encouraged that person to commit a crime. See State v. Smith, 316 S.C. 53, 447 S.E.2d 175 (1993). The Jury, weighing the evidence and testimony in this case, could have reasonably found that Moran conspired with Herring, but never acted to solicit someone to carry

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out the plan. Therefore, Moran's verdicts were not inconsistent and he is not entitled to a new trial.

Accordingly, and based upon the foregoing, it is therefore ORDERED, ADJUDGED AND DECREED that Moran's Motion for a New Trial is hereby DENIED

IT IS SO ORDERED.



The Honorable D. Craig Brown
Presiding Circuit Court Judge

October 28, 2014
Florence, South Carolina

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Law Office of W. James Hoffmeyer
125 Warley Street
Florence, South Carolina 29501

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