

ORIGINAL

Volume II of II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Stephanie P. McDonald, Circuit Court Judge

RECEIVED

DEC 12 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JAMES ROSE,

APPELLANT

APPELLATE CASE NO. 2013-002750

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
 STATE’S EXHIBITS # 2, 4, 14, 16, 17 (ALL PHOTOS OF HOME INTERIOR)
 STATE’S EXHIBIT # 28 (PHOTOGRAPH OF DODGE CHARGER)
 STATE’S # 34 (PHOTOGRAPH OF INTERIOR OF CAR)
 STATE’S EXHIBIT # 96 (911 CALL MADE BY ANTOINE AIKEN)
 STATE’S EXHIBIT # 99 (CD OF PHONE CALL)**

State vs. James Rose

1 to act. It is not necessary to establish intent by direct
2 and positive evidence. But intent may be established by
3 inference in the same way as any other fact, by taking into
4 consideration the acts of the parties and all the facts and
5 circumstances of the case.

6 Criminal intent is a mental state, a conscious wrong
7 doing. It is up to you to determine what the defendant
8 intended to do based on the circumstances shown to have
9 existed.

10 Ladies and gentlemen, mere presence at the scene of a
11 crime is not sufficient to prove someone guilty of a crime.
12 A defendant's presence where a crime is being committed or
13 mere association with the person who commits a crime does
14 not make a defendant an accomplice or an aider and abettor
15 of the person committing the crime.

16 Suspicious circumstances like mere presence are not
17 sufficient for a finding of guilt against any defendant.
18 Mere presence or mere association does not result in a duty
19 to act.

20 A person present where a crime is committed or who
21 associates with people who plan or commit a crime does not
22 generally have a legal duty to prevent that crime from
23 occurring or to object to the criminal conduct involved.

24 The burden is on the State to prove every element of
25 the crime charged. If you find after reviewing all of the

State vs. James Rose

1 evidence that the State has proven that the defendant was
2 only present at the scene of a crime and that the State has
3 not proven beyond a reasonable doubt any other participation
4 in the crime, then you must find the defendant not guilty.

5 If a crime is committed by two or more people who are
6 acting together in committing a crime, the act of one is the
7 act of all.

8 A person who joins with another to commit an unlawful
9 act is criminally responsible for everything done by the
10 other person which happens as a natural or probable
11 consequence of the acts done in carrying out the common plan
12 and purpose.

13 For example, two people can be guilty of killing
14 another person when only one of the two had a gun, there was
15 only one bullet, and only one of the two fired the shot that
16 caused the death.

17 If two or more people are together, acting together,
18 assisting each other in committing the offense, the act of
19 one is the act of all. Or as it is sometimes said, the hand
20 of one is the hand of all.

21 Prior knowledge that a crime is going to be committed
22 without more is not sufficient to make a person guilty of
23 that crime. Mere knowledge that another person is going to
24 commit a crime, even if the defendant is present when the
25 crime is committed is not sufficient to convict the

State vs. James Rose

1 defendant as a principal.

2 Guilt as a principal is shown by actual or constructive
3 presence at the scene as a result of prior arrangement.

4 Therefore, a finding of a prior arranged plan or common
5 scheme is necessary for a finding of guilt as a principal.

6 The State must prove beyond a reasonable doubt by
7 competent evidence the theory of the hand of one is the hand
8 of all.

9 A principal in a crime is one who either actually
10 commits the crime or who is present aiding, abetting, or
11 assisting in committing the crime.

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

18 Present at the commission of a crime means to be
19 sufficiently near to aid and abet and assist in the
20 commission of the crime.

21 Mere presence at the scene of a crime is not sufficient
22 to convict one as a principal on the theory of aiding
23 abetting -- and abetting. However, presence at the scene of
24 a crime by prearrangement to aid, encourage, or abet in the
25 perpetration of the crime constitutes guilt as a principal.

State vs. James Rose

1 Intent is also a necessary element; for there must have
2 been a common design or intent to commit the crime, and the
3 crime must have been committed pursuant thereto with the
4 person aiding and abetting by some overt act.

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

11 Ladies and gentlemen, you have been selected by both
12 the State and the defendant to be fair and impartial jurors.
13 It is your duty then in your deliberations to take the law
14 which I have just given to you and apply it to the facts
15 which you determine to be true.

16 You must consider these instructions as a whole and not
17 follow some and ignore others. You have heard the evidence
18 and now you have heard the law.

19 Whatever your verdict, your foreperson will indicate it
20 by checking not guilty or guilty as to the charge on the
21 verdict form. Your foreperson will then sign and date the
22 verdict form.

23 And we have a simple verdict form here. There is one
24 charge, one indictment: On the charge of murder, we the
25 jury unanimously find the defendant James Rose - and there

State vs. James Rose

1 is a spot for guilty or not guilty. And after you
2 unanimously reach your verdict your foreperson will check
3 the verdict. She will then sign and date the verdict form
4 and knock on the door for the bailiff to come and get it.

5 Please remember that although the foreperson is the
6 only juror who actually writes the verdict, it's not hers
7 alone. The verdict must be a unanimous verdict, and your
8 foreperson is not authorized to write the verdict until you
9 have all agreed as to what that verdict should be.

10 Ladies and gentlemen, I'm going to send you to your
11 jury room in just a minute. But please don't begin
12 discussing the case until you have received the verdict form
13 and the exhibits and stipulations that have been admitted
14 into evidence.

15 Once you receive those, that will be your signal to
16 begin your deliberations. Once you begin your
17 deliberations, you will deliberate until you have reached a
18 verdict at which time you will knock on the door and the
19 foreperson will advise the bailiff that you have a verdict
20 and we will bring you out to receive it.

21 In the meantime, if you have a question that comes up,
22 write it out on one of the sheets of paper in your notebook
23 and give it to your foreperson and she will knock on the
24 door. The bailiff will bring it to me. I share any
25 questions y'all might have with the lawyers and we determine

State vs. James Rose

1 how best to respond to those.

2 If I could get my two alternates to stay outside the
3 door. After y'all return to your jury room I need to chat
4 with them briefly. Your lunch should be there. I apologize
5 for running over into the lunch time. But I wanted y'all to
6 be able to eat your lunch while you start delivering.

7 The alternates aren't allowed to be with you y'all
8 while you deliberate because by statute I have to release
9 them at this point. But you are allowed to get your lunch
10 and any other item that you might have in the jury room.
11 The bailiff will help y'all do that. So I'm going -- if I
12 could let everybody go. If my alternates will just wait
13 right outside the door. I need to ask the lawyers a quick
14 question and then we will go from there. Thank you very
15 much, ladies and gentlemen, for your patient.

16 (WHEREUPON, jury exits courtroom December 12, 2013,
17 1:48 p.m.)

18 THE COURT: Okay. Any objections to the charge? I
19 know I fumbled a word or two at least in the intent section.
20 I think I corrected it. But I'm happy to bring them out
21 here and recharge them on that if y'all need me to. I think
22 I said implied instead of inferred. But then I got back to
23 it. I'm having some eye allergy problems today in case
24 y'all can't tell. Either that or any other objections to
25 the charge as given?

State vs. James Rose

1 and come and hear whatever their verdict is. We have no
2 idea how long they will be. But they will begin
3 deliberating shortly.

4 But I did want to tell y'all thank you and that you can
5 certainly get your lunch and go. And I'll just meet you
6 right outside to thank you as well while the lawyers take a
7 look at the exhibits.

8 If y'all could go ahead and get those in order. Sam,
9 here is the verdict form.

10 (WHEREUPON, break December 12, 2013, 1:49 p.m.)

11 (WHEREUPON court reporter played back direct examination of
12 Antoine Aiken from 11:45 p.m. to playing of 911 tape.)

13 (WHEREUPON, jury indicated they had heard enough.)

14 (WHEREUPON, jury exited courtroom.)

15 THE COURT: All right. Anything from the State or the
16 defense?

17 MS. SHEALY: I have nothing. Thank you.

18 MS. RUNEY: Nothing from the defense.

19 THE COURT: Okay. We will be at ease until we hear
20 from them again.

21 (WHEREUPON, break 4:49 p.m.)

22 (WHEREUPON, resume January 12, 2013, 5:06 p.m.)

23 (WHEREUPON, Court's Exhibit Number 14, note from jury, was
24 marked for identification.)

25 (WHEREUPON, Court's Exhibit Number 15, note from jury, was

State vs. James Rose

1 marked for identification.)

2 (WHEREUPON, Court's Exhibit Number 16, note from jury, was

3 marked for identification.)

4 THE COURT: It is to my understanding is that we have a
5 verdict. At this point there is a verdict, so if we could
6 bring the jury.

7 (WHEREUPON, jury enters courtroom January 12, 2013,

8 5:08 p.m.)

9 THE BAILIFF: The jury is all present, Your Honor.

10 THE COURT: All right. Thank you, sir. And thank you,
11 ladies and gentlemen.

12 Madam foreperson, it is my understanding that the jury
13 has reached a verdict. Is that correct?

14 MADAM FOREPERSON: Yes, Your Honor.

15 THE COURT: All right. And if you would give the
16 verdict form to our bailiff, please.

17 (Document presented to the Court.)

18 THE COURT: Thank you.

19 THE CLERK: If you will please have the defendant
20 stand. Case Number 2012-GS-10-3312, the State of South
21 Carolina versus James Rose, on the charge of murder we the
22 jury unanimously find the defendant James Rose guilty.

23 Signed Emily Long, December 12, 2013.

24 Madam forelady, ladies and gentlemen of the jury if
25 this is your verdict please raise your right hand.

State vs. James Rose

1 all we know.

2 So, you know, keep your head up man.

3 THE COURT: Thank you, sir. Anything further?

4 MS. RUNEY: No, Your Honor.

5 THE COURT: Okay. Well, I'm certainly sorry for
6 everything everyone, both families, have gone through in
7 this situation. And it just absolutely did not have to
8 happen. But this was an execution. There is really no
9 other way to describe it.

10 And it is a tragedy for Mr. Shannon's family. I mean
11 seven children, nieces and nephews I'm sure he won't be able
12 to be there for them. And, you know, Mr. Rose won't be able
13 to be there for y'all.

14 Sir, the sentence is life in prison. God bless you.

15 MR. ROSE: Thank you.

16 THE COURT: Yes, sir.

17 THE COURT: All right. I am going to speak to the jury
18 and thank them and get them to sign the indictment and then
19 I'll be right back for anything else we need to put on the
20 record. The charge is a court's exhibit. So let me give
21 that back to the court reporter.

22 Ladies and gentlemen, I just want to thank y'all. You
23 are excused for the week. But I will meet you right back
24 here. All right. We will be at ease. I will come chat
25 with the lawyers in just a minute.

Can we have the time stamp from
the photo at BP?

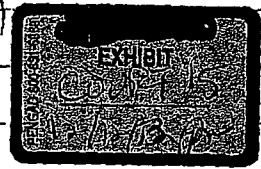
#157
EMILY LONG



We would like to hear the 911 tapes,
a transcript would be great.

Also, would like to hear the testimony
from Anton Aiken.

#157
EMILY CONY



FILED

THE STATE OF SOUTH CAROLINA 2013 DEC 16 PM 4:26
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY COURT
Court of General Sessions

JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

The Honorable Stephanie McDonald, Presiding Judge

INDICTMENT NO.: 2012-GS-10-03312
WARRANT NO.: M620026

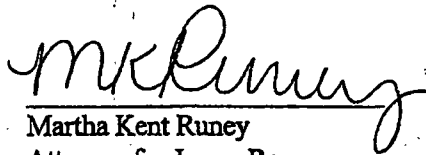
STATE OF SOUTH CAROLINA, RESPONDENT

vs.

JAMES ROSE, APPELLANT

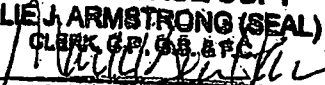
NOTICE OF APPEAL

Defendant appeals the conviction and sentence imposed by the Honorable Stephanie McDonald, Presiding Judge, Ninth Judicial Circuit, dated December 12, 2013. As a result of the defendant's conviction, the defendant has an active sentence of Life at the South Carolina Department of Corrections.



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Attorney for James Rose
Charleston County Public Defender's Office
101 Meeting Street, Suite 500
Charleston, SC 29401

Other counsel of record are:
Jennifer Shealy, Assistant Solicitor
Office of the Solicitor, Ninth Judicial Circuit
O.T. Wallace County Office Building
101 Meeting Street
Charleston, SC 29401
(843) 958-1900

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., S.S. & F.C.
By 
DEPUTY CLERK

FILED

2013 DEC 16 11 4:25
THE STATE OF SOUTH CAROLINA

JULIE J. ARMSTRONG
CLERK OF COURT
IN THE COURT OF APPEALS

RECEIVED

DEC 12 2014

SC Court of Appeals

BY
APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

The Honorable Stephanie McDonald, Presiding Judge

INDICTMENT NO.: 2012-GS-10-03312

WARRANT NO.: M620026

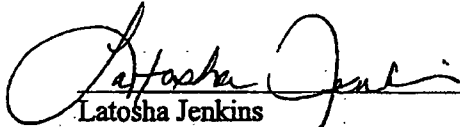
STATE OF SOUTH CAROLINA, RESPONDENT

vs.


JAMES ROSE, APPELLANT

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Jennifer Shealy, Assistant Solicitor for Charleston County, by hand delivering a copy of it to the Charleston County Solicitor's Office at 101 Meeting Street, Charleston, South Carolina 29401, on December 16, 2013.


Latosha Jenkins
Paralegal to Attorney Martha Kent Runey
Charleston County Public Defender
O. T. Wallace County Office Building
101 Meeting Street
Charleston, SC 29401
(843) 958-1850

Dated: December 16, 2013.

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., C.S. & F.C.
By 
DEPUTY CLERK

JKS20120100640

WITNESSES

Charleston County Sheriff

AGENCY CASE NUMBER

2012001550B

ARREST WARRANT NUMBER

M620026

DATE OF ARREST

January 25, 2012

ACTION OF GRAND JURY
TRUE BILL

Foreperson of Grand Jury

Date:

JUN 1 1 2012

VERDICT

Guilty

Foreperson of Petit Jury

INDICT

12/12/13

Date:

DOCKET NO. 2012GS1003312

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

June Term 2012

THE STATE

vs.

JAMES R ROSE

DOB: [REDACTED]

B/M

Indictment for

Murder

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

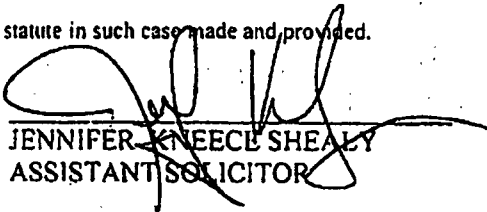
INDICTMENT

At a Court of General Sessions, convened on June 11, 2012 the Grand Jurors of Charleston County present upon their oath:

Murder

That in Charleston County on or about January 24, 2012, with malice aforethought, JAMES R ROSE did kill and murder Leland Shannon by means of shooting the victim, and that Leland Shannon did die in Charleston County as a proximate result thereof on January 24, 2012; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JENNIFER KNEECE SHEALY
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston VS. STATE

James R Rose

AKA:

Race: BLACK Sex: M Age: 36

DOB: SS#

Address:

City, State, Zip:

DL#: SID#: SC01003139

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Murder

INDICTMENT/CASE#: 2012GS1003312

A/W#: M620026

Date of Offense: 1/24/2012

S.C. Code §: 16-03-0010. 0020

CDR Code #: 0116

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-03-0010. 0020 of the S.C. Code of Laws, bearing CDR Code # 0116

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, (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Kneece Shealy, Jennifer

SC Bar#

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 Life 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 days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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. 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 16-25-20 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

Recipient:

*Fine:

Table with 2 columns: Description and Amount. 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/ca, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$133.90

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:

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

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

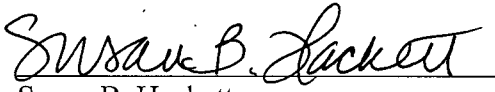
Handwritten signatures and names: Phyllis Vactor, Samuel Curry

Handwritten signatures and names: Presiding Judge, Judge Code: 2103, Sentence Date: December 12, 2013

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

December 12th, 2014


Susan B. Hackett
Appellate Defender

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DEC 12 2014

SC Court of Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Stephanie P. McDonald, Circuit Court Judge

RECEIVED

DEC 12 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

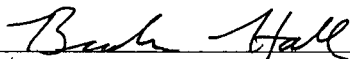
JAMES ROSE,

APPELLANT

APPELLATE CASE NO. 2013-002750

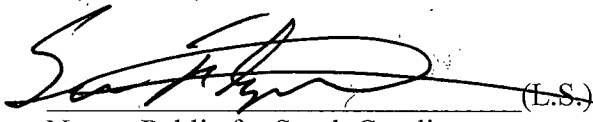
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Caroline M. Scramton, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 12th day of December, 2014.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 12th day of December, 2014.



(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.