

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions

J. Derham Cole, Circuit Court Judge

Case No. 2011-GS-46-01851
Appellate Case No. 2013-001953

The State Respondent,

v.

Julia B. Phillips Appellant.

INITIAL BRIEF OF APPELLANT

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*Attorneys participating in the Appellate Practice Project are encouraged to work with the Pro Bono Office at the University of South Carolina School of Law. To that end, Counsel for Appellant enlisted Jennifer Jokerst, a Third-Year Student at the School of Law. Counsel thanks Ms. Jokerst for her invaluable assistance in the preparation of this brief.

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STATEMENT OF ISSUES ON APPEAL

1. Whether the trial court erred in denying Appellant's directed verdict motions where the State presented character and some motive evidence but essentially no evidence that Appellant intentionally, or through a common design, aided, abetted, or assisted in the commission of Melvin Roberts' murder?

STATEMENT OF THE CASE

In 2010, Appellant Julia B. Phillips was charged with accomplice murder in the death of her boyfriend, Melvin Roberts. (Indictment; Tr. p.878, ll.19-21). More than three years' later, Julia was tried before the Honorable J. Durham Cole, convicted by a jury, and sentenced to life imprisonment. (Tr. p.1192, ll. 6-11; Sentencing Sheets). At trial, Julia stood alone. The killer of Melvin Roberts remains at-large. Julia timely filed a notice of appeal and this appeal followed.

STATEMENT OF FACTS

I. Introduction

In February 2010, Melvin Roberts, a prominent attorney and former mayor of York, South Carolina was tragically murdered in the driveway of his home. A shot was fired, he was bludgeoned in the head, and he was ultimately strangled to death with a zip tie. Melvin was 79. What followed was a three-year investigation that captivated the Cities of York and Gaffney and, eventually, the national media. The case was the subject of an Investigation Discovery special and has its own Dateline episode. Unfortunately, the State and York police have never identified—let alone located—Melvin’s killer.

More than three years after Melvin’s death, Julia Phillips was convicted as an accomplice in his murder. The State’s theory is that Julia, fearing the end of a nearly 10 year, late-in-life relationship, hired or convinced an unknown and unidentified person, to kill Melvin. At trial, assistant solicitor Kristie Hodge opened her case with a warning:

So what I caution you to do is not try to go down the trail and think that somehow this week we are going to be able to solve this and we will be able to put a pretty bow on it for you, or that you yourselves are going to be able to listen to evidence and think, oh, I got it.

(Tr. p.190, ll. 8-13). Assistant Solicitor Hodge was correct—the State has not solved this case. Nonetheless, pressure and publicity dictated that someone be convicted. Unfortunately, that someone was Julia.

II. The Relationship

Melvin and Julia were romantically involved for more than 10 years. (Tr. p. 198, l. 3.) Although Julia maintained a separate home in Gaffney, she and Melvin lived mostly together in his home in York and Julia sometimes referred to Melvin as her

husband. (Tr. p. 196, ll. 18–20.) Melvin owned a building where Julia operated a store in Gaffney. (Tr. p. 581, ll. 3 – 4.) Melvin supported Julia financially; indeed, she relied on him for most of life’s necessities. On February 4, 2010, the night of Melvin’s murder, he and Julia planned to meet at his house to celebrate Julia’s birthday. (Tr. p. 198, ll. 21–23.)

III. The Murder

On February 4, Julia arrived at Melvin’s home. (Tr. p. 199, ll. 23–25) She pulled into the driveway, at the backside of the house. (Tr. p. 200, ll. 18–20) It was raining and dark and she was grabbed from behind as she got out of her car. (Tr. p. 200, l. 20, p. 201, ll. 1-5) Two assailants covered her mouth and wrapped her head in duct tape. (Tr. p. 201, ll. 17–21) Her hands were bound and she was dragged behind a brick wall behind the house. (Tr. p. 201, l. 24 – p. 202, l. 5) Julia was forced to lie in the mud as the assailants waited for Melvin to arrive. (Tr. p. 202, l. 17 – p. 203, l. 2) When Melvin pulled up in his car, Julia overheard an argument and what sounded like a metal pipe hitting something. (Tr. p. 203, ll. 7–15) She next heard a gunshot before it became quiet. (Tr. p. 203, l. 16–17) Eventually, Julia was able to free herself using a key she had wrapped around her wrist. (Tr. p. 203, ll. 17–21.) She removed the duct tape from her mouth and legs. (Tr. p. 203, l. 24 – p. 204, l. 6)

Now freed, Julia got in her car and called 911. (Tr. p. 204, ll. 7 – 11) When the police arrived, Melvin was dead, face down on the patio. (Tr. p. 217, ll. 6–7) A shot was fired and traveled through Melvin’s jacket. (Tr. p.334, ll. 2-5). He died of asphyxiation secondary to strangulation: he had been strangled by a zip tie, which was still around his neck when he was found. (Tr. p. 334, ll. 2–5, p. 341, ll. 8–9, p. 350, l. 11)

IV. The Investigation

The night of the murder, Julia spent more than five hours at the York Police Department. (Tr. p. 525, ll. 4–6.) Detectives collected her clothing; the duct tape that was still wrapped around her head, wrists, and ankles; a gunshot residue kit; and a DNA swab. (Tr. p. 449, l. 2–3, p. 474, l. 14 – p. 475, l. 24, p. 478 ll. 1–3, p. 479, ll. 11–14) At Melvin’s house, a K-9 unit picked up a scent that went through the woods behind the house and ended at a cross street some distance away. (Tr. p. 375, ll. 1–23) The K-9 officer later testified that the scent ended because the person to whom it belonged likely got into a car and left. (Tr. p. 376, l. 22 – p. 377, l. 4) Along that same path, the police found several footprints. A forensic analyst later testified that these prints belonged to one person and that it was not Julia. (Tr. p. 380, ll. 20–23; p. 290, ll. 3–9)

Three days after the murder, Julia again met with detectives. (Tr. p. 493, ll. 14–23) She provided additional details and the following day, officers returned to Melvin’s house where they collected lead bullet fragments found in a garden hose, door frame, and wooded deck, near where Melvin’s body had been found. (Tr. p. 503, ll. 13–16; p. 503, l. 21 – p. 504, l. 22)

Five days after the murder, Julia spoke yet again to detectives and told them about several weird phone calls she had received a few weeks prior. (Tr. p. 506, l. 23 – p. 507, l. 10) Police collected Julia’s phone to follow-up. Lieutenant Edwards later testified that the information did not yield any new leads. (Tr. p. 508, l. 14 – p. 509, l. 7) Six days after the murder, officers returned to Melvin’s house and, with Julia’s help, reenacted the events of the evening. (Tr. p. 652 l. 14 – p. 653, l. 13)

On February 12, officers returned to Melvin's home to execute a search warrant. During the search, officers collected a .38 caliber revolver for analysis. (Tr. p. 838, ll. 19–22.) That day, Julia called Lieutenant Edwards to provide some information she remembered that could produce potential suspects. (Tr. p. 514, l. 23 – p. 515, l. 6).

On February 19, Julia spoke briefly with detectives and SLED investigators and consented to a search of her personal computer. (Tr. p. 518, ll. 16–24, p. 846, ll. 10–14.) (Tr. p. 519, ll. 9–21.). *No incriminating evidence was found on the computer.*

On March 8 Detective Mumaw visited Julia's store in Gaffney, collected her .38 caliber revolver, and turned it over to SLED for ballistics testing. (Tr. p. 676, ll. 1–2; p. 674, ll. 10–21) He also collected a .32 caliber gun from Johnny Smith, a friend of Julia's, and also submitted that gun for testing. (Tr. p. 681, ll. 4–5; p. 680, l. 23 – p. 681, l. 1). *Neither weapon proved a match for the bullet fragments found at Melvin's house.* (Tr. p. 904, l. 12 – p. 905, l. 16)

On March 18, with no physical evidence and nothing but several statements from Julia that, according to the State “conflicted,” Julia was arrested and charged with Melvin's murder.

One week later, officers executed a search warrant at Julia's Gaffney home. (Tr. p. 686, l. 14–15; p. 687, ll. 15–16) From the Gaffney home, they removed bullets, duct tape, and an ax handle. (Tr. p. 687, ll. 2–6). At trial, the State was unable to link *any* of these items to *anything* found at the crime scene. Indeed, although the State collected DNA from more than 70 people during its investigation, all of the DNA profiles found at the scene—on the duct tape, the zip tie, and on Julia's clothing—remain unidentified. (Tr. p. 930, l. 3 – p. 931, l. 5., p. 1085, l. 22 – p. 1086, l. 13)

V. The State's Case

Julia was arrested in March of 2010. Her trial did not begin until August 26, 2013. The State spent roughly 41 months trying to tie her to Melvin's murder. The following chart depicts the sum total of what they found:

Witness	Title	Testimony	Circumstantial Evidence of Guilt?
Jimor Gwinn	Lieutenant, York Police Department	<ul style="list-style-type: none"> • First to arrive on scene, found Mr. Robert's body (Tr. p. 215, ll. 13–14, p. 220, ll. 12–16) • Testified that Appellant did not appear concerned about Mr. Roberts's welfare (Tr. p. 222, ll. 17–24), though he acknowledged on cross that individuals are not allowed near bodies at a crime scene (Tr. p. 229, ll. 1–6) 	No
Brian Trail	Captain, York Police Department	<ul style="list-style-type: none"> • Noted inconsistencies in Appellant's recollection of events <ul style="list-style-type: none"> ○ Initially said groceries were out of the car, and then said she didn't get any of them out of the car (Tr. p. 243, ll. 5–22) • Initially seemed upset but calmed down quickly and wasn't crying or screaming when talking to him (Tr. p. 244, ll. 21–25) 	No
Ralph Merchant	Operations Manager, York County Public Safety Communication Center (911 Center for York County)	<ul style="list-style-type: none"> • Testified to authenticate 911 tape (Tr. p. 267, l. 8 – p. 268, l. 15) 	No
Vicki Hallman	Senior Agent, SLED	<ul style="list-style-type: none"> • Investigated crime scene • Acknowledged that there 	No

		was no match on the tread of the footprints found, though Julia's shoes could be excluded (Tr. p. 290, ll. 3-9)	
Doctor Robert Thomas	Pathologist, York Pathology Associates	<ul style="list-style-type: none"> • Performed autopsy on Mr. Roberts (Tr. p. 331, ll. 21-23.) • Mr. Roberts sustained several injuries: <ul style="list-style-type: none"> ○ Suffered injuries from blunt instrument (Tr. p. 337, ll. 6-14) ○ Zip tie/ligature mark around neck where he had been strangled, which ultimately caused his death (Tr. p. 340, ll. 21-23) • The official cause of death was listed as asphyxiation secondary to strangulation (Tr. p. 350, l. 11.) 	No
Heather Ramos	Subpoena Analyst for Sprint	<ul style="list-style-type: none"> • Testified to authenticate cell phone records that were linked to nothing. (Tr. p. 357, ll. 4-15) 	No
Randy Clinton	Sergeant, York County Sherriff's Office, K9 Handler	<ul style="list-style-type: none"> • Dog tracked scent through woods behind Mr. Robert's house (Tr. p. 365, ll. 2-8, p. 368, ll. 5-6) • Lost scent when he got to the road, indicating the perpetrator may have gotten in to a car at that point (Tr. p. 375, ll. 20-23, p. 377, ll. 2-5) • Found only one pair of footprints going in and out from the house (Tr. p. 371, ll. 22-23), which did not match Julia's (See Vicki Hallman's testimony, Tr. p. 290, ll. 3-9) 	No

Sara Robbins	York County Solicitor's Office, formerly was a Lieutenant with the York Police Department	<ul style="list-style-type: none"> • Collected Appellant's clothing the night of the murder (Tr. p. 399, ll. 13–15) • Julia went with sketch artist, but composite was unsuccessful (Tr. p. 408, l. 8 – p. 409, l. 19) • Julia would not provide underwear or shoes at first (Tr. p. 399, ll. 22–23); however; these items were later collected after officers obtained a search warrant (Tr. p. 405, ll. 12–17) • Acknowledged that she did not follow up on information received from neighbors (Tr. p. 423, l. 15 – p. 424, l. 18) 	No
Robin Edwards	Wife of Lieutenant Dale Edwards	<ul style="list-style-type: none"> • Provided clothes to Julia following the murder so police could collect what she was wearing (Tr. p. 437, ll. 6–13) 	No
Selena Kinard	Forensic Technician, SLED	<ul style="list-style-type: none"> • Testified to establish chain of custody for the following collected evidence: bullet fragments (Tr. p. 465, ll. 12–19), zip tie (Tr. p. 467, ll. 12–21), blood sample taken from Mr. Roberts during autopsy (Tr. p. 468, ll. 16–24), Julia's black shirt (Tr. p. 469, ll. 15–20), Mr. Roberts's sport coat (Tr. p. 470, ll. 8–13), and fragment recovered from Mr. Roberts (Tr. p. 470, ll. 19–22) 	No
Doris Yarborough	Forensic Technician, SLED	<ul style="list-style-type: none"> • Testified to establish chain of custody for the following collected evidence: gunshot residue kit (Tr. p. 554, ll. 9–13); 	No

		DNA sample from Julia (Tr. p. 554, l. 24 – p. 555, l. 5); fired bullets (Tr. p. 555, ll. 14–18); pair of shoes (Tr. p. 555, ll. 20–23); bank bag (Tr. p. 556, ll. 3–5); duct tape from Appellant’s ankle, head, and wrist (Tr. p. 556, ll. 6–10); Appellant’s black and white shirts (Tr. p. 556, l. 11 – p. 557, l. 2); and a 0.38 Smith and Wesson revolver (Tr. p. 557, ll. 3–11)	
Ronnie Burgess	Neighbor/Acquaintance of Appellant	<ul style="list-style-type: none"> • Picked up Appellant’s son, Hunter, the night of the murder (Tr. p. 562, ll. 2–4) • Hunter was at Mr. Burgess’s house fixing his computer at the time of the murder (Tr. p. 562 l. 7 – p. 564, l. 12) 	No
Marie Kaplowitz	Office assistant for Melvin Roberts	<ul style="list-style-type: none"> • Saw accounting reports and noted that Mr. Roberts covered most expenses for Appellant (Tr. p. 582, l. 12 – p. 583, l. 6) • Did not note anything unusual about Appellant’s behavior at funeral and following the murder (Tr. p. 592, ll. 14–24) 	No
Angela Durham	Employee of Appellant	<ul style="list-style-type: none"> • Saw Appellant give son money from store on various occasions; he sometimes returned with prescription pills (Tr. p. 608, l. 22 – p. 609, l. 12) 	No
Jacqueline Renne Atkins (“Regina Atkins”)	Branch Manager for Wells Fargo in Rock Hill, SC	<ul style="list-style-type: none"> • Testified about Appellant’s accounts at Wells Fargo (Tr. p. 742, ll. 7–20) • Previous monthly statements for Appellant’s bank accounts at Wells Fargo showed low amounts 	No

		in checking and savings account, and approximately \$1500 on line of credit (Tr. p. 745, ll. 14–17)	
Charles Patton	Co-owner, Buford Street Drugs store in Gaffney, SC	<ul style="list-style-type: none"> • Testified that Appellant purchased approximately \$300 worth of prescription medication a month from his store (Tr. p. 749, ll. 3–11); however, this cost does not account for any insurance payment that may have been made (Tr. p. 750, ll. 1–9) • All prescriptions purchased by Appellant were legal (Tr. p. 750, ll. 10–11) 	No
Tracy Brown	Former paralegal for Melvin Roberts	<ul style="list-style-type: none"> • Testified regarding Melvin Roberts’s will, which she created and witnessed (Tr. p. 754, ll. 10–15) • The will left the building in Gaffney and any vehicle (except for the Cadillac) of Appellant’s choosing to the Appellant (Tr. p. 755, ll. 17–24) • Noted that from what she saw, relationship between Appellant and Mr. Roberts was “mostly good” and did not personally witness anything bad (Tr. p. 757, l. 3) 	No
Diane Rayfield	Wife of Dennis Rayfield and friend of Melvin Roberts	<ul style="list-style-type: none"> • Husband was friend of Melvin’s, met Appellant through him (Tr. p. 817, l. 14 – p. 819, l. 20) • Spoke on a personal level with Appellant on a number of occasions (Tr. p. 819, l. 22 – p. 820, l. 9) • Noticed that things were tense at times; around time of murder, during one conversation, Appellant 	No

		acknowledged that Mr. Roberts was reducing the amount of money he was giving her (Tr. p. 823, ll. 1–10)	
Nikki Hughes	Forensic Technician, SLED	<ul style="list-style-type: none"> Established chain of custody for the following evidence: zip tie (Tr. p. 888, l. 23 – p. 889, l. 6); Appellant’s black shirt (p. 890, ll. 11–21); Appellant’s white shirt (Tr. p. 891, l. 21 – p. 892, l. 3); and the Smith and Wesson gun (Tr. p. 892, l. 23 – p. 893, l. 11) 	No
Patricia Crooks	Forensic Technician, SLED	<ul style="list-style-type: none"> Established chain of custody for the following evidence: GSR kit (Tr. p. 895, ll. 2–14); bank bag and money in it (Tr. p. 896, ll. 5–16); and Appellant’s shoes (Tr. p. 897, ll. 3–16) 	No
Suzann Cromer	Firearm and Toolmark Examiner, SLED	<ul style="list-style-type: none"> Unable to identify caliber of gun used based on the bullet fragments recovered at the scene (Tr. p. 902, ll. 14–24) Could not link Appellant’s revolver to the murder (Tr. p. 904, ll. 13–15) Could not rule out any guns based on the limited markings found on the fragments (Tr. p. 904, ll. 12–15, p. 905, ll. 9–16) 	No
Adrienne Hefney (nee Riley)	Forensic DNA Analyst	<ul style="list-style-type: none"> Found partial and unidentified DNA profile on duct tape (Tr. p. 918, ll. 8–13, p. 919, ll. 17–21) Unidentified minor contributor DNA found on zip tie (Tr. p. 921, l. 25 – p. 922, l. 9) Unidentified DNA found on Appellant’s clothing (Tr. p. 923, l. 19 – p. 924 l. 	No

		<p>4)</p> <ul style="list-style-type: none"> • Unidentified male DNA found on waistband of Appellant's jeans (Tr. p. 925, ll. 1-7) • Presence of DNA does not rule out possibility that perpetrator used gloves (Tr. p. 922, l. 23 – p. 923, l. 3) 	
Billy Mumaw	Detective, York Police Department	<ul style="list-style-type: none"> • Lead investigator on the case (Tr. p. 613, ll. 10-12) • Spoke with Appellant on a number of occasions. • Followed various information received but found no other leads or potential suspects (Tr. p. 18 – p. 639, l. 12, p. 668 l. 23 – p. 669, l. 25, p. 682, ll. 4-22) • Acknowledged on cross that phone records could not corroborate Guy Blankenship's account of certain phone calls he received from Appellant regarding the murder (Tr. p. 705, ll. 5-24) • Still searching for killer (Tr. p. 699, l. 25 – p. 700, l. 8) 	No
Scott Williams	Captain of Criminal Investigations, Fort Mill Police Department	<ul style="list-style-type: none"> • Assisted with investigation • Followed up on information but did not gain any new leads or suspects (Tr. p. 844, l. 25 – p. 846, l. 7) • Found Appellant's recollections inconsistent and that she was "all over the board" (Tr. p. 830, ll. 8-17, p. 837, l. 10 – p. 838, l. 6, p. 850, ll. 5-24) 	No
Dale Edwards	Lieutenant, York Police Department	<ul style="list-style-type: none"> • Interviewed Appellant for approximately 5 hours on 	No

		<p>the night of the murder and again on several occasions after that (Tr. p. 525, ll. 1–6, p. 493, ll. 14–15, p. 514 l. 23 – p. 515 l. 18)</p> <ul style="list-style-type: none"> • Thought statements were inconsistent, as Appellant was remembering new details each time he spoke with her (Tr. p. 498 l. 1 – p. 500, l. 11) • Followed information provided by Appellant and others, but found no new leads (Tr. p. 490, ll. 3–20) 	
Guy Blankenship	Police informant, acquaintance of Appellant	<ul style="list-style-type: none"> • Claims Appellant made comments in past asking whether he, or someone he knew, would be interested in killing Mr. Roberts for money (Tr. p. 774, l. 6 – p. 776, l. 25) • Witnessed Appellant purchase prescription pills on numerous occasions (p. 771, ll. 13–23) 	Maybe
John Roberts	Former Forensic Scientist in Trace Department, SLED	<ul style="list-style-type: none"> • No gunshot residue (GSR) found on Appellant’s jeans, shoes, or hands (Tr. p. 943, ll. 1–7) • Found traces of GSR on Appellant’s forearms (Tr. p. 949, ll. 1–7) and clothing (Tr. p. 947, ll. 7–18) • On cross, acknowledged that the amounts found were very minor (in fact, only one particle that could be attributed solely to GSR was found on each forearm) (Tr. p. 963, l. 18 –p. 965, l. 17) • GSR can be transferred if an individual or their clothing comes in contact 	Maybe

		<p>with it (Tr. p. 966, ll. 4–7); that is, the presence of GSR does not definitively mean an individual fired a gun or was near a gun when it was fired</p> <ul style="list-style-type: none"> • Found two contact holes in victims clothing, meaning the gun was pressed to the clothing at the time it was fired (Tr. p. 956, ll. 16–18) 	
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VI. The First Directed Verdict Motion

After Roberts testified that the smallest amount of gunshot residue possible was on Julia’s sleeve (but did not testify that the residue was from the particular gun fired at the scene), the State rested. Julia moved for a directed verdict arguing that only two of the State’s twenty-seven witnesses actually provided any testimony of substance:

[T]he only evidence in six days that I have seen is gunshot residue testimony and Guy Blankenship. Judge, Guy Blankenship’s testimony, if we believe it, if we believe his testimony he doesn’t say he’s the one that killed Melvin. He doesn’t say there is any connection to Melvin’s murder. If we believe his testimony he says that she asked him to kill Melvin and then he did nothing. He didn’t go kill Melvin. He didn’t make any other connection to the actual event. If you believe that testimony, it doesn’t quite make the connection.

Judge, the gunshot residue testimony, one particle in two places, on her shirt sleeves was the testimony. And it could have come from many different locations. Those taken alone I don’t think are sufficient to survive a directed verdict, judge.

(Tr. p. 967, l. 24 – p. 968, l. 15).

The State argued that Julia’s “inconsistent” statements about the “description of her attackers” and the “wetness of her clothing” somehow evidenced her guilt. (Tr. p. 969, ll. 3 – 15). The State also argued, incorrectly, that “we presented sufficient evidence

and substantial evidence that the gunshot residue comes within ten feet of the actual scene of the crime and . . . I mean actually within ten feet of where his body was actually laying, which directly contradicts where she is.” (Tr. p. 969, ll. 11-17). This statement was incorrect. Roberts merely testified that Julia was likely not 60 feet away behind a wall when the gun was fired. (Tr. p. 959, ll. 10-15). Of course, Roberts did not dispel other possibilities, such as transfer to Julia from an officer. Nevertheless, the trial court denied Julia’s motion. (Tr. p. 970, ll. 4-16).

VII. Julia’s Case

Julia presented 6 witnesses. First, William Beam, a former Raleigh Police detective and current private investigator, testified regarding his own investigation. He explained that there were leads he found during his investigation that were not followed up on by the York police unless they were “immediately connected to Julia Phillips.” (Tr. p. 972, l. 4 – p.975, l. 25). In the weeks following Melvin’s murder, he saw a bullet hole in a couch stacked with clothing at Julia’s Gaffney home. (Tr. p. 976, l. 2, - p. 981, l. 25; Def. Ex. 28-29).

Gerone French, who lived on the other side of the woods behind Melvin’s house, explained that on the night of the murder two men emerged from the woods and walked up his street. (Tr. p. 995, l. 12- p. 996, l. 10). The two men were five foot nine and six foot one, dressed in coats and blue jeans. (Tr. p. 996, ll. 11-17). Another neighbor, Andrew Clay, told the police that on the night of the murder he saw a scratched red truck with a “bunch of Mexicans” in it on Melvin’s street. (Tr. p. 1000, l.19 – p. 1001, l.21).

Julia Bass, Melvin’s across-the-street neighbor, explained that on two different days the week of Melvin’s murder, she saw a “black Lincoln” enter Melvin’s driveway at

a “high rate of speed.” (Tr. p. 1006, l.21 – p. 1007, l.2). This caught her attention because Melvin “had different business dealings, you know, he had rental property, had a car lot and that sort of thing.” (Tr. p. 1007, ll. 2-6). The driver of the car was a “real lean black male.” (Tr. p. 1008, l.18 – p. 1009, l. 3).

Joi Frederick, trial counsel’s wife and paralegal, testified that Julia had relinquished her right to Melvin’s building in Gaffney (that housed her store)—the only specific item of real value given to Julia in Melvin’s will. (Tr. p. 1012, l. 21 - p. 1015, l. 8).

Finally, Chris Robinson testified as a gunshot residue expert. It was his 551st time testifying as an expert. (Tr. p. 1026 – p. 1053).² Robinson testified in far more detail than the State’s GSR expert, John Roberts. There were several key takeaways. First, Robinson testified that gunshot residue travels no further than “three to four feet.” (Tr. p. 1035, ll. 19-24). This was important because Julia had no residue on her other than one particle on each forearm sleeve. Had Julia been near the gunshot fired at Melvin, it would have been all over her clothes and shoes—it was not. (Tr. p. 1037, ll. 1-25). Robinson also explained that the amount of residue on Julia was so miniscule that it would not have satisfied FBI, U.S. Army, or U.K. Forensics Department standards to even qualify as “gunshot residue.” (Tr. p. 1032, l. 21 – p. 1033, l. 9; 1040, l. 22 – p. 1041, l.6).

² The State’s GSR expert was testifying for the 64th time.

IX. The Second Directed Verdict Motion

After resting her case, Julia renewed her directed verdict motion, arguing that Robinson established that the State’s only real “evidence”—one particle of gunshot residue on each sleeve—would not have met the threshold to even be called gunshot residue by the FBI, U.S. Army and several other reputable agencies. (Tr. p. 1053, l. 23 – p. 1054, l. 6). Julia’s motion was denied. (Tr. pp. 1053, ll. 16 – 20). This appeal followed.

ARGUMENT

At first blush, this case does not present the typical vehicle for a directed verdict appeal. After all, *surely* the State’s 27 witnesses and 93 exhibits “point conclusively” to Julia’s guilt. A trial lasting more than a week with a transcript of nearly twelve-hundred pages *must have* excluded other reasonable hypotheses. Deeper digging, however, reveals that the State survived Julia’s motions *because* so many people testified, *because* they had so many exhibits and *because* their case-in-chief took nearly 6 days to unfold. Clearly, the State’s strategy was to overwhelm the trial court and jury with dozens of witnesses who said very little—if anything—of substance.

I. Standard of Review

In a circumstantial evidence case, the jury may not convict unless:

Every circumstance relied upon by the State be proven beyond a reasonable doubt; and . . . all of the circumstances proven be consistent with each other and taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis.

State v. Odems, 395 S.C. 582, 590, 720 S.E.2d 48, 52, (2011). This Court, like the trial court, must find for the State if there is any direct or *substantial* circumstantial evidence

reasonably tending to prove Julia's guilt. *Id.* at 586, 720 S.E.2d at 50. However, this Court should reverse if the evidence merely raises a suspicion of her guilt. *Id.*

Although Julia presented a defense and renewed her motion for directed verdict at the close of same, this Court can and should consider the State's case as it stood when the State rested. *See State v. Hepburn*, 406 S.C. 416, 436-37, 753 S.E.2d 402, 413 (2013) (“[W]here a defendant's evidence does not serve to fill gaps in the state's evidence, her testimony does not operate to waive consideration of the evidence as it stood at the close of the state's case.”). Regardless of which directed verdict motion this Court considers, the State has not met its burden of proving accomplice murder.

II. Accomplice Murder

“Under the ‘hand of one is the hand of all’ theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose.” *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010). Thus, 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 overt act.” *Id.* “Mere presence at the scene is not sufficient to establish guilt as an aider or abettor.” *Id.* at 480, 697 S.E.2d at 584.

At no point has the State ever contended that Julia “personally” murdered Melvin. During her closing, Assistant Solicitor Hodge explained “[i]f you believe that the defendant is guilty of doing one thing, just one thing on the night Melvin Roberts was murdered to aid in that murder then she is guilty.” (Tr. p. 1096, ll. 12-15). And, at no point has Julia ever disputed that she was “present at the scene of the crime.”

Consequently, this case rises and falls on whether the State demonstrated that Julia “intentionally, or through a common design, aided, abetted, or assisted in the commission of Melvin’s murder.” It did not.

Boiled down, the State produced a particle of gunshot residue—that may or may not have come from the gun at the scene—and a drug dealer and lifelong informant who said that in the past Julia mentioned hiring someone to kill Melvin. This does not equal “*substantial circumstantial* evidence reasonably tending to prove the guilt of the accused.” *Odems*, 395 S.C. at 586, 720 S.E.2d at 50 (emphasis added). Instead—at best—the State’s case merely raised a suspicion that Julia was guilty. *State v. Schrock*, 283 S.C. 129, 132, 322 S.E.2d 450, 452 (1984). Consequently, she was entitled to a directed verdict. *Id.*

III. Guy Blankenship

By all accounts, Guy Blankenship was the State’s most crucial witness. (Tr. pp. 766-813). Age forty-one, Blankenship owned an antique store in Gaffney and knew Julia because she ate in a restaurant he also owned. (Tr. p. 766, ll. 3 – 22). The store Julia owned in Gaffney was diagonally across the street from Blankenship’s and the two had been acquaintances for at least ten years. (Tr. p. 768, ll. 2-6; p. 769, ll. 13-17).

According to Blankenship, he and Julia also knew each other through Johnny Smith, “sort of a drug dealer in town.”³ (Tr. p. 770, ll. 21-23). Blankenship witnessed Julia buying oxycontin, Lortab and Xanax from Smith. (Tr. p. 771, ll. 13-17). At some

³ At trial, Blankenship’s criminal record was politely described as “lengthy.” It includes convictions for grand larceny, petit larceny, larceny conspiracy and he had been working off numerous other drug charges as a confidential informant for the City of Gaffney for more than 10 years. (Tr. p. 777, ll. 1-21; p. 779, ll. 1-14). Blankenship described in detail how long and how often he had been paid to provide testimony. (Tr. p. 779, l. 15 – p. 780, l. 4). On cross-examination, Blankenship explained how he also did “black market plastic surgery; bad checks; credit charges . . . everything except murder.” (Tr. p. 783, ll. 20-22). He also testified that “a hundred and something times” he had bought drugs while wearing a wire and expecting payment from the police. (Tr. p. 786, ll. 6-21).

point, the two began talking about Melvin and Julia's relationship and, Blankenship testified that Julia mentioned Melvin was no longer going to support her. (Tr. p. 773, l. 14 – p. 774, l. 5).

After discussing their background, Blankenship delved into a wild story about a murder involving several friends of his from Norfolk, Virginia. (Tr. p. 774, l. 11 – p. 775, l. 9). The upshot of this testimony was that, according to Blankenship, Julia overheard the story and asked “is that the type of stuff he [Blankenship's friend] does and can you pay him for that”. (Tr. p. 775, ll. 11 – 21). According to Blankenship, Julia made this same inquiry “a few times.” (Tr. p. 776, ll. 5).

Most importantly, Blankenship testified that he did not actually take any steps to assist Julia with her alleged request. (Tr. p.787, ll.11-17). In sum, Blankenship's testimony, if believed, was that Julia asked if he knew who could kill Melvin for her and Blankenship said no and did nothing.

IV. Two Particles of “Gunshot” Residue

As explained above, the State's expert found one particle of what he said was gunshot residue on each of Julia's shirt sleeves. Julia's expert explained, and the State did not dispute, that this miniscule amount would not have satisfied the threshold for gunshot residue for the F.B.I., U.S. Army, or several other renowned forensics departments. Regardless, if believed, the State produced evidence that Julia had the smallest testable amount of gunshot powder on her shirt. No gunpowder was on her body, hands, or other clothes—which would have been likely had she been near the shooter or actively participating in the crime.

V. Comparison Cases

The vast majority of the State's case focused on Julia's alleged motive and her character, neither of which are elements of murder. *State v. Hartley*, 307 S.C. 239, 247, 414 S.E.2d 182, 187 (Ct. App. 1992). Aside from the motive and character testimony, the State rested its case on the testimony of Blankenship and Roberts, the gunshot residue expert. As our cases demonstrate, this was simply not enough.

A. State v. Bostick

The State presented far more evidence against Bostick than Julia. Bostick was convicted of killing his neighbor, Polite, and burning down her home. The State's evidence included: (1) Polite's personal items, including a watch and two sets of car keys in a burn pile near Bostick's property; (2) Bostick's shoes containing gasoline—which was used to set the fire; and (3) blood was found on Bostick's clothing worn the day of the murder, but was not matched to Polite's DNA. *State v. Bostick*, 392 S.C. 134, 141-42, 708 S.E.2d 774, 778 (2011). Nevertheless, our Supreme Court reversed, finding the evidence raised, at most, a mere suspicion that Bostick committed the crime. *Id.* at 142, 708 S.E.2d at 778. Similarly here, the State has not found, much less introduced at trial, the weapon used to inflict the blunt force injuries to Melvin or the gun used to shoot at him. None of the items provided by Julia matched. No DNA or blood was ever linked to Julia. Julia's gun was not the gun fired at the scene. Indeed, DNA evidence found at the scene implicated someone else entirely—someone the police have yet to identify, though Julia and the individuals close to her and Melvin were ruled out. (Tr. p. 1085, l. 22 – p. 1086, l. 13.)

Instead, the State relied on two microscopic particles to prove that Julia was closer to the gun when it went off than she originally told the police—analogueous to the gasoline found on Bostic’s shoes. However, the State failed to exclude the possibility that the particles were transferred to Julia in some other manner. For example, the officers who transported Julia to the police station the night of the murder could easily have transferred the particles by touching her. The particles could have come from the bullet hole in Julia’s couch at the Gaffney home—which had clothes stacked next to it. Or, the particles could have been transferred by the killer himself. As set forth above, Julia told the police that she was tied up and dragged behind a wall, meaning she was in substantial contact with the murderer—even to the point that unknown DNA was left on her jeans. This same person could easily have left gunshot residue on her shirt.

Assuming *arguendo* that Julia was close enough to the gun when it went off to have trace residue on her, the State still provided no evidence that she was acting as an accomplice and in concert with the killer. Without evidence that Appellant aided or abetted an alleged accomplice in the commission of the murder, the trace amounts of gunshot residue, at most, simply place Julia at the scene of the crime and near the gun when it went off—a point that has never really been in contention. The *Bostick* Court had far more evidence than here and reversed.

B. State v. Lollis

In *Lollis*, our Supreme Court reversed an arson conviction where the defendant had: (1) marital troubles between himself and the victim; (2) financial troubles; (3) placed his valuables that would have been destroyed in a storage room one day prior to the fire; and (4) had a key to the storage room on the day of the fire. *State v. Lollis*, 343 S.C. 580,

585, 541 S.E.2d 254, 257 (2001). The Court explained that alternative evidence showed Lollis was current on his mortgage and had no reason to burn his house because he was remodeling and had moved his belongings for the remodel. *Id.* Similarly here, numerous witnesses testified that they were unaware of any marital troubles between Julia and Melvin. And, several hypotheses are more reasonable than the State's contention that Julia hired an unknown, uncharged accomplice to kill the man who took care of her every need for more than a decade.

For example, it was just as likely that a disgruntled client or an angry tenant killed Melvin and assaulted Julia. This hypothesis would be consistent with witness testimony that a suspicious car was seen near the scene the night of the murder and testimony that Melvin could occasionally be brash and upset those with whom he conducted business.⁴ It would also reasonably explain why the assailant left without significantly harming Julia.

Furthermore, the State presented no evidence linking Julia to any alleged killer—indeed, the killer has yet to be identified. There is no evidence that Julia paid anyone to murder Melvin, no large financial transactions, no phone calls to unknown numbers, not even a known accomplice. There is no evidence that Julia in any way acted in concert with anyone, just as the State failed to present evidence that Lollis acted as an accomplice with his wife. In short, the State presented no evidence that there was an agreement between Julia and an unidentified killer to find that she acted as an accomplice in the murder. Finally, there was very little evidence that Julia stood to gain anything from having Melvin killed. In fact, the contrary is more likely—Julia stood to lose far more

⁴ For example, just prior to the murder, Mr. Roberts had an argument with a tenant after implying that the wife's weight had caused the floor in the kitchen to sag. (Tr. p. 639 ll. 1–9.)

with Melvin dead, as he supported her financially and this support would cease upon his death

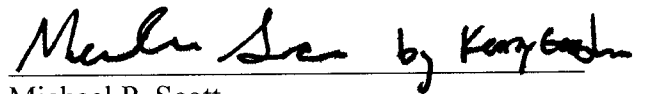
C. State v. Odems

In *Odems*, our Supreme Court reversed on a directed verdict appeal where the defendant: (1) was located in the getaway car a short time after the robbery, (2) fled from law enforcement and (3) attempted to enlist the assistance of an unknown vehicle because that evidence did not exclude every other reasonable hypothesis. *Odems*, 395 S.C. at 591, 720 S.E.2d at 53. The Court explained that, alternatively, the defendant could have simply entered the vehicle after the crime had already been committed. *Id.* Similarly here, Julia could easily have been angry about a fight she and Melvin had and jokingly mentioned killing him. And, alternatively, Julia could have been—and admitted she was—near the gunshot that killed Melvin—she simply provided the alternative explanation that she was tied up and laying on the ground. The State never eliminated these alternative theories.

CONCLUSION

This is a case about pressure—on the York police and on the State. This is a case about publicity. More than five years after his death, Melvin’s killer remains at large. A reward is currently available for his or her arrest and conviction. In the meantime, someone had to be charged and convicted. That someone was Julia. In a trial focused almost entirely on character and motive, the State introduced very little evidence that Julia *actually did* anything or participated in *any way* in Melvin’s murder. For these reasons and those set forth above, this Court should **REVERSE** the trial court and direct a verdict of **ACQUITTAL**.

Respectfully submitted,

Handwritten signature of Michael P. Scott in black ink, written over a horizontal line.

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IN THE SOUTH CAROLINA COURT OF APPEALS

Appellate Case No. 2013-000829

The State, Respondent

v.

Julia B. Phillips, Appellant.

PROOF OF SERVICE FOR INITIAL BRIEF OF APPELLANT

I, Michael P. Scott, hereby certify that I have served a copy of the PROOF OF SERVICE FOR INITIAL BRIEF OF APPELLANT upon counsel for the other parties by mailing copies to them at the address below via the United States Mail this 9th day of March, 2015.

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March 9, 2015

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Re: *The State v. Julia B. Phillips*
Appellate Case No. 2013-001953

Dear Ms. Kitchings:

Enclosed for filing with the Court is an original and one copy of the Initial Brief of Appellant and Designation of Matter To Be Included in Record on Appeal in the above-referenced matter. I would appreciate you filing the original and returning a clocked-in copy of both to me in the enclosed self-addressed stamped envelope.

By copy of this letter and as evidenced by the attached Proof of Service, we are serving Respondent and counsel of record with a copy of the same.

Sincerely yours,



Michael P. Scott

MPS/ksh

cc: Robert Michael Dudek, Esquire
Donald J. Zelenka, Esquire
Julia B. Phillips (SCDC ID: 00356902)

Charleston

Charlotte

Columbia

Greensboro

Greenville

Hilton Head

Myrtle Beach

Raleigh

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