

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

JABARRIE BROWN,

APPELLANT

APPELLATE CASE NO. 2012-210387

Appeal from Lancaster County

William Jeffrey Young, Circuit Court Judge

Opinion No. 2015-UP-150 (Filed March 18, 2015)

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SC Court of Appeals

PETITION FOR REHEARING

Appellant respectfully petitions the Court for a rehearing of the case decided in its Unpublished Opinion No. 2015-UP-150 pursuant to Rule 221(a), SCACR based upon the following points overlooked or misapprehended by the Court.

The Opinion cites *State v. Golston*, 399 S.C. 393, 397-98, 732 S.E.2d 175, 178 (Ct. App. 2012) for the proposition that “the mere existence of evidence that [the defendant] committed [acts constituting CDV] in addition to other acts which could constitute CDVHAN . . . does not warrant a charge on simple CDV. . . . [T]he existence of evidence that [the defendant]

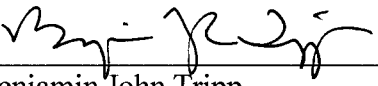
committed simple CDV in addition to CDVHAN does not warrant the charge. There must be evidence from which the jury could find the defendant committed only the lesser offense.” The Court fails to properly distinguish the facts of *Golston* and misapplies this proposition.

In *Golston*, the Court reasoned that the defendant’s admission to slapping the victim logically dictated that he caused the serious bodily injury amounting to CDVHAN. The defendant suggested that his attack would not have led to her severe facial swelling. *Id.* at 396-98, 732 S.E.2d at 177. However, the Court stated that because no evidence showed “anyone else caused the injury to the victim . . . if the State proved *Golston* committed CDV, he was necessarily the person whose attack caused all of the victim’s injuries.” *Id.* at 398-99, 732 S.E.2d at 178-79. In that sense, the defendant’s testimony that he merely slapped the victim did not warrant a charge on simple CDV because the jury would have had to logically conclude that his attack resulted in her serious bodily injury; no evidence allowed the jury to conclude the defendant committed CDV by slapping the victim but did not thereby cause the serious injury aggravating the offense to CDVHAN.

In this case, however, the evidence allowed the jury to logically conclude that Appellant was either guilty of CDV or CDVHAN. If the jury concluded Appellant touched the victim with the gun or reasonably caused a person in the victim’s position to fear injury by the gun, he would be guilty of CDVHAN. However, if the jury concluded he did not touch the victim with the gun and did not reasonably cause a person in the victim’s position to fear injury from it, he would not be guilty of an aggravating circumstance and would only be guilty of CDV. Unlike in *Golston*, no logical computation dictated that Appellant could not be guilty of CDV and not simultaneously be guilty of CDVHAN. The decision of whether Appellant was guilty of CDV or

CDVHAN was a factual one for the jury based on evidence in the record supporting either conclusion.

Respectfully submitted,



Benjamin John Tripp
Appellate Defender

This 20th day of March, 2015.

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CERTIFICATE OF SERVICE

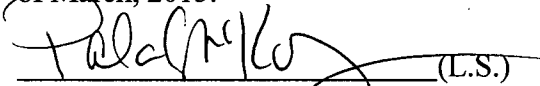
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon David Spencer, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 20th day of March, 2015.

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Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 20th day
of March, 2015.


(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.