

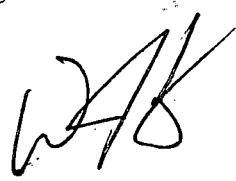
STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)
The State)
v.)
Michael Vernon Beaty, Jr.,)
DEFENDANT.)
_____)

LYNN W. LANCASTER
IN THE COURT OF GENERAL SESSIONS
EIGHTH JUDICIAL CIRCUIT 2015 MAR 27 A 9:22
ORDER DENYING DEFENDANT'S
MOTION FOR NEW TRIAL
LAURENS COUNTY
CLERK OF COURT
Indictment Number
2013-GS-30-1553

Defendant was convicted by jury of murder during the General Sessions term of January 26, 2015. After the jury returned its verdict, this Court held a sentencing hearing and sentenced Defendant to a life sentence. Counsel for Defendant filed a written motion for a new trial on February 9, 2015. The State filed a written reply on February 18, 2015. After careful review of the arguments of the parties and the entire record in this case, the Court denies the motion for a new trial

1. This Court properly declined instructing the jury on involuntary manslaughter based on the facts and evidence in the record.

There is no evidence in the record by which the jury could have found Defendant guilty of the crime of involuntary manslaughter. "Involuntary manslaughter is the killing of another without malice and unintentionally while engaged in either: (1) an unlawful act not amounting to a felony and not naturally tending to cause death or great bodily harm; or (2) a lawful act with reckless disregard for the safety of others." *State v. Reese*, 370 S.C. 31, 36, 633 S.E.2d 898, 900 (2006). The theory that Defendant presented to the jury was that he simply prevented the victim Emily Anna Asbill from diving out of a moving car by grabbing the back of her shirt and inadvertently applying pressure to her throat. The defense rested on the proposition that the ligature marks on Ms. Asbill's neck were caused by the hemline of her shirt. The



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defense also proposed that after Defendant pulled Ms. Asbill back into the car, she settled into an awkward position, partially sitting on the floorboard of the passenger side. Along with the effects of excessive alcohol consumption, defense witness Dr. Arden testified that the awkward position possibly led to a "positional asphyxiation" that killed Ms. Asbill.

Under Defendant's theory, there is no evidence of an unlawful act. Defense expert Dutch Johnson opined that Ms. Asbill would have fallen out of the vehicle if Mr. Beaty had not acted to restrain her. According the testimony of Dr. Johnson and defense witness Jonathon Arden, Defendant was heroically, not recklessly, trying to save Ms. Asbill's life. Defendant's case actually presents him as showing serious regard for the safety of another person, as opposed to a "reckless disregard."

This Court finds the nothing in the State's closing arguments that would support involuntary manslaughter charge. The State presented an image in its closing of Defendant continuing to drive with his left hand while restraining Ms. Asbill by her shirt with his right hand. First, arguments of counsel are not evidence. But more importantly, it is apparent to this Court that the State's purpose was only to argue to the jury the inconsistency and implausibility of Defendant's theory, not to argue that there was evidence that the defense acted with criminal negligence. This Court finds that the State's theory throughout the trial was abundantly clear: Defendant killed Ms. Asbill with malice aforethought by strangling her with a USB cable (State's Exhibit #42) that was found inside the vehicle by crime scene investigators. The State's theory was corroborated by DNA evidence on the USB cord, distinct ligature markings on Ms. Asbill's throat which were remarkably consistent with such a cord being crossed-over in a noose-like manner, and the testimony of the pathologist (Dr. Janice Ross) who conducted the autopsy.

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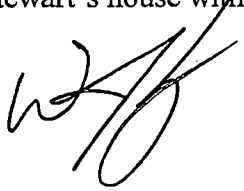
The State in its case-in-chief presented the jury with substantial circumstantial evidence that Defendant maliciously strangled Emily Anna Asbill with a USB cord. Defendant then chose to present the jury an alternate theory, by way of two expert witnesses, that he acted heroically in defense of Ms. Asbill's life but that she was tragically asphyxiated as a result. The jury could not have reasonably concluded from the facts and evidence presented that Defendant caused Ms. Asbill's death by acting in "reckless disregard for the safety of others." Accordingly, the Court correctly concluded that an involuntary manslaughter charge to the jury was not appropriate in this case.

2. This Court properly denied Defendant's motion for directed verdict.

As there was substantial circumstantial evidence presented by the State to the jury proving Defendant's guilt, the Court properly denied Mr. Beaty's motion for directed verdict at the conclusion of the State's case. "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury." *State v. Lane*, 410 S.C. 505, 507, 765 S.E.2d 557, 558 (2014) (quoting *State v. Weston*, 367 S.C. 279, 292-93, 625 S.E.2d 641, 648 (2006)).

In this case, there was testimony regarding the following:

- 1) Defendant gave several statements to law enforcement that varied materially from one another, from which a jury could reasonably infer guilt;
- 2) Defendant initially suggested that Ms. Asbill, his girlfriend, died because of a self-inflicted cutting-type injury on her arm, when later statements indicate that he knew this to be untrue;
- 3) Defendant and his friend William Alexander, departed in a car from Kyle and Rose Stewart's house with Emily Anna Asbill;

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- 4) Ms. Asbill was found unresponsive, and likely deceased, in the car when Defendant's step-father came out of the house at 702 Calvert in response to Defendant and William Alexander ringing the doorbell;
- 5) Investigators found a USB cord (State's Exhibit #42) in the vehicle, its diameter consistent with the diameter of the ligature mark and its rectangular end remarkably consistent with the ligature marks on Ms. Asbill's throat;
- 6) The USB cord had a mixture of Defendant's DNA and Ms. Asbill's DNA on the ends of the cord, and Ms. Asbill's DNA in the middle; none of the DNA on cords pulled out of the car matched William Alexander;
- 7) The pathologist who conducted the autopsy, Dr. Janice Ross of Newberry, opined that the manner of death was homicide, the cause of death was ligature strangulation and that the ligature marks on Ms. Asbill's neck were consistent with the USB cord found in the car.

Defendant argues that in a case where the State has only circumstantial evidence, when ruling on a motion for directed verdict, this Court should apply the standard of "excluding all reasonable hypotheses other than the guilt of the defendant." In support of his argument, Defendant relies heavily on *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2011). It is noteworthy that the Court in *Odems* never explicitly adopts this as the standard to be used by the circuit courts for weighing the State's evidence at the directed verdict stage. Rather, the *Odems* Court in reversing the denial of the defendant's directed verdict motion says, "[T]he definition **illustrates** the lack of evidence against Petitioner (emphasis added)." *Id.* at 590, 720 S.E.2d at 52. *State v. Lane* is the more recent and controlling precedent which clearly lays out the proper standard to be applied by the circuit court at directed verdict: Is there "any direct evidence or



substantial circumstantial evidence reasonably tending to demonstrate the guilt of the accused?" The *Lane* Court does not even refer to the "exclusion of any reasonable hypothesis other than guilt" standard on which Defendant so heavily relies.

In its case in chief, the State presented substantial circumstantial evidence from which the trier of fact could conclude beyond a reasonable doubt that Defendant murdered Emily Anna Asbill by strangulation. Accordingly, this Court properly denied the Defendant's motion for directed verdict at the close of the State's case.

3. The Court did not err in denying Defendant's proposed order of closing arguments.

When a defendant presents evidence and puts up witnesses in its defense, there is absolutely no requirement under either the law or criminal practice procedures in South Carolina courts that the State must bifurcate its closing argument to the jury. "The solicitor is not required to make an opening argument to the jury on issues of fact, (quoting *State v. Lee*, 255 S.C. 309, 178 S.E.2d 652 (1971)), but may do so in his discretion." *State v. Rodgers*, 269 S.C. 22, 23, 235 S.E.2d 808, 809 (1977).

This Court instructed the State to open on the law as was requested by the Defense, but in no way required the State to present its entire closing argument to the jury in this opening. In the first phase of the State's closing argument, the Solicitor opened on the law and briefly summarized State's theory of the case even though there was no requirement under the law or by order of the Court that he do so. In the second phase of his closing, the Solicitor again laid out the State's theory of how Defendant strangled Ms. Asbill to death, and contrasted it with theory put forward by defense counsel in closing.

This Court finds that the Solicitor did absolutely nothing in his closing argument to violate the special responsibilities of a prosecutor as articulated in the Rules of Professional

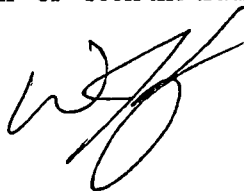


Responsibility. The accusations of prosecutorial misconduct made by defense counsel are without merit. Moreover, the defense argument as to improper order of closing argument relies on a faulty interpretation of the case law and accepted criminal trial practices of this State.

4. The Court did not err based on the content of its introductory statement to the jury.

In *State v. Aleksey*, 343 S.C. 20, 538 S.E.2d 248 (2000), the language at issue was the trial court's instruction that the jury has "but one single objective, and that is to seek the truth, to seek the truth regardless of from what source that truth may be derived." *Id.* 343 S.C. at 26, 538 S.E.2d at 251. The *Aleksey* Court found no error in the circuit court judge's instruction: "While we have urged trial courts to avoid using any "seek" language when charging jurors on either reasonable doubt or circumstantial evidence (see *State v. Needs*, 333 S.C. 134, 155, 508 S.E.2d 857, 867-68 (1998)), the "seek" language here did not appear in either the reasonable doubt or circumstantial evidence charges, but in the instructions on juror credibility. Both the reasonable doubt and circumstantial evidence charges were complete and proper." *Id.* 343 S.C. at 27, 538 S.E.2d at 251 - 252. The Court added, "The remarks were prefaced by a full instruction on reasonable doubt and followed by an additional exhortation to bear in mind the State's heavy burden of proof... [T]he instruction as a whole properly conveyed the law to the jury and there is not a reasonable likelihood the jury applied the judge's instructions to convict appellant on less than proof beyond a reasonable doubt." *Id.* 343 S.C. at 29, 538 S.E.2d at 253.

While this Court's opening remarks to the jury in this case made mention of a search for the truth, the Court also told the jury that these remarks were not a charge on the law. At the end of the presentation of evidence and argument of counsel, the Court properly charged the jury on the law applicable to this case. This Court's formal charge on the law did not instruct the jury to "search for the truth" or "seek the truth." Accordingly, any issues regarding the Court's



introductory remarks were resolved when the Court properly charged the jury on the presumption of the Defendant's innocence and the State's burden of proof.

As to the State's remarks in its closing argument to the jury, I find that the State never asked the jury to search for, find, or seek the truth. The State merely urged the jury to do its duty as the judge of the facts and render a verdict that "speaks the truth." The State argued to the jury that the word "verdict" comes from Latin root words that literally mean "to speak truth." Consistent with the Court's charge on the law, the State properly explained its burden of proof ("proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt"), as well as direct evidence versus circumstantial evidence.

5. The Court did not err in denying Defendant's request for voir dire #9.

There was no error in this Court's refusal to ask potential jurors: "Who among you just don't like lawyers, particularly lawyers who represent persons accused of a crime in cases like this?" I do not find this question to be directly relevant or probative to the issues at hand, and the discovery of any potential bias of jurors towards Defendant or his counsel was sufficiently vetted by other questions asked of the jury pool during voir dire.

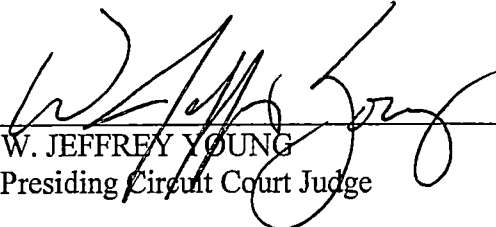
As to other assertions made by Defendant in his motion under this argument, I do not find any attempt by the State to offer insulting remarks or expressions of animosity toward defense counsel during the course of the trial. The State did not personally attack either Mr. Grose or Mr. Wise in any manner. By stating in his closing that the Defendant's counsel wanted jurors to "check their common sense at the door," I find that the State was simply attacking the reasonableness and plausibility of Defendant's theory of the case. Lastly, this Court finds completely proper the cross-examination of defense experts and comments during the State's



closing questioning the potential bias of witnesses who were collecting fees for their testing, review, and testimony, as is permissible under S.C. Rule of Evidence 608(c).

Based on all of the facts and evidence in the record, this Court finds that the Defendant's arguments for a new trial are without merit. Accordingly, the Court denies the motion and the jury's decision stands.

IT IS SO ORDERED.


W. JEFFREY YOUNG
Presiding Circuit Court Judge

Sumter, South Carolina

20 March, 2015