

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

August 5, 2015

The Honorable Joyce McDonald
PO Box 1557
Camden SC 29021-1557

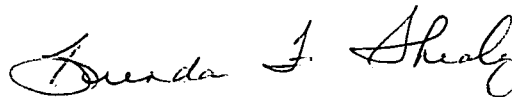
REMITTITUR

Re: The State v. Christopher Ryan Whitehead
Lower Court Case No. 2007GS2800022, 2007GS2800019
Appellate Case No. 2012-213683

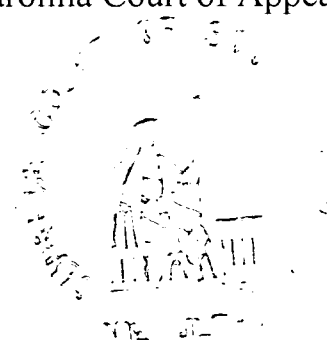
Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,



CHIEF DEPUTY CLERK



cc: Daniel Edward Johnson, Esquire
LaNelle Cantey DuRant, Esquire
Melody Jane Brown, Esquire

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

The State, Respondent,

v.

Christopher Ryan Whitehead, Petitioner.

Appellate Case No. 2012-213683

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Kershaw County
G. Thomas Cooper, Jr., Circuit Court Judge

Memorandum Opinion No. 2015-MO-033
Heard December 11, 2014 – Filed June 10, 2015

AFFIRMED AS MODIFIED

Appellate Defender LaNelle Cantey DuRant, of
Columbia, for Petitioner.

Attorney General Alan M. Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Donald J. Zelenka, Senior
Assistant Attorney General Melody J. Brown, and

Solicitor Daniel E. Johnson, all of Columbia, for the
Respondent.

JUSTICE KITTREDGE: We granted a writ of certiorari to review the court of appeals' unpublished opinion in *State v. Whitehead*, Op. No. 2012-UP-526 (S.C. Ct. App. filed Sept. 12, 2012). For the reasons set forth in *State v. McDonald*, 412 S.C. 133, 771 S.E.2d 840 (2015); we affirm as modified. While the admission of the codefendants' statements violated the Confrontation Clause,¹ in view of the overwhelming evidence of guilt, the error was harmless.

AFFIRMED AS MODIFIED.

TOAL, C.J., PLEICONES, BEATTY and HEARN, JJ., concur.

¹ U.S. Const. amend. VI; see *Bruton v. United States*, 391 U.S. 123 (1968).

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(D)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Christopher Ryan Whitehead, Appellant.

Appellate Case No. 2008-103966

Appeal From Kershaw County
G. Thomas Cooper, Jr., Circuit Court Judge

Unpublished Opinion No. 2012-UP-526
Heard June 19, 2012 – Filed September 12, 2012

AFFIRMED

Senior Appellate Defender Joseph L. Savitz, III, and
Appellate Defender LaNelle Cantey DuRant, both of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, Assistant Deputy Attorney
General Donald J. Zelenka, and Assistant Attorney
General Melody Jane Brown, all of Columbia, and
Solicitor Daniel E. Johnson, of Columbia, for
Respondent.

PER CURIAM: Christopher Whitehead appeals from his convictions of murder and burglary in the first degree, arguing the trial court erred in (1) allowing into evidence the statements of his two non-testifying co-defendants without adequately redacting their claims of his involvement because it denied him of his right to confront and cross-examine the witnesses; and (2) not directing a verdict acquitting him of murder and burglary because the State's evidence established nothing more than a mere suspicion of guilt.

Josh Zoch died from multiple blunt force trauma to his head after being beaten with a baseball bat the night of December 12, 2006. Zoch, Whitehead, Derrick McDonald, and Robert Cannon all worked at the same Sonic Restaurant at one time. McDonald and Cannon both gave statements to police admitting their and Whitehead's involvement in the murder. Whitehead, McDonald, and Cannon were tried together as co-defendants in May 2008. None of the three co-defendants testified at trial. The jury found all three guilty, and the trial court sentenced Whitehead to two concurrent sentences of life without parole for murder and first-degree burglary due to his 2005 guilty plea to attempted armed robbery. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to Whitehead's argument that the trial court erred in allowing McDonald's and Cannon's statements into evidence without adequately redacting the portions of their statements implicating Whitehead because it denied him his right to confront and cross-examine the witnesses: *State v. McDonald*, Op. No. 5033 (S.C. Ct. App. filed September 12, 2012) (finding the neutral phrase "another person" inserted into Cannon's statement avoided any *Bruton v. United States*, 391 U.S. 123 (1968), violation because the redacted statement only implicated the statement's maker, and did not limit the participants to three, which would implicate the three defendants on trial; therefore, the trial court properly allowed Cannon's redacted statement into evidence).

2. As to Whitehead's argument that the trial court erred in not directing a verdict acquitting him of murder and burglary because the State's evidence only established a mere suspicion of guilt: *State v. Kelsey*, 331 S.C. 50, 62, 502 S.E.2d 63, 69 (1998) (stating the trial court is concerned with the existence of evidence rather than its weight when considering a directed verdict motion); *State v. Sanders*, 388 S.C. 292, 299, 696 S.E.2d 592, 596 (Ct. App. 2009) ("In reviewing the denial of a motion for a directed verdict, the evidence must be viewed in the light most favorable to the State, and if there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the

accused, an appellate court must find that the case was properly submitted to the jury." (quoting *Kelsey*, 331 S.C. at 62, 502 S.E.2d at 69)); *State v. Cherry*, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004) ("[A] trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.").

AFFIRMED.

FEW, C.J., and HUFF and SHORT, JJ., concur.