STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marion County
The Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No. 2014-002331

THE STATE,

Respondent,

v.

DARRYL WAYNE MORAN,

Appellant.

INITIAL BRIEF OF RESPONDENT

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II.

The trial court properly denied Appellant's motions for a directed verdict and new trial because ample evidence supported the jury's finding of Appellant guilty of conspiracy. (Appellant's Issue I)

STATEMENT OF THE CASE

Appellant was indicted for solicitation to commit murder and conspiracy to solicit murder by a Marion County grand jury on May 5, 2011. (Indictments.) His co-defendant, James Herring Jr., was indicted only for solicitation to commit murder. (T. p. 6, lines 15-23.) Appellant and his co-defendant were tried before the Honorable D. Craig Brown on August 4 and 5, 2014. (T. p. 1) The jury acquitted them of the solicitation charge, but found Appellant guilty of conspiracy. (T. p. 232, lines 16-23.) Appellant filed a Motion for a New Trial on August 25, 2014. Judge Brown denied the Motion in an Order dated October 28, 2014. This Appeal follows.

STATEMENT OF FACTS

Randy Parrot, the victim in this case, is a fifty-eight year old residential construction worker. (T. p. 73, lines 1-24.) He met his girlfriend, Jennie Rabon, in 2009. (T. p. 74, lines 8-17.) Rabon was a realtor, and Parrot completed the punchlist for the homeowner before the home was sold. (T. p. 74, line 20 – p. 75, line 8.) At the time Parrot and Rabon met, Rabon was still married to Appellant. (T. p. 80, lines 21-24.)

Appellant and Rabon were married in 1996 and had one child together named Dalton. (T. p. 81, line 20 – p. 82, line 1.) The marriage deteriorated in 2009, and by May of 2009, Rabon moved out of the home. (T. p. 82, lines 6-23.) In July of 2009, Rabon moved in with Parrot. (T. p. 83, lines 13-18.) They shared a home located at the back of a dirt road, approximately one mile off the main road. (T. p. 90, lines 6-12.) Along the dirt road are some abandoned buildings and old barns leading to their house (T. p. 90, lines 9-12.) At some point, Appellant hired a private detective to conduct surveillance of Rabon and Parrot together. (T. p. 103, lines 12-15.) After a family court hearing, Appellant was granted custody of their son and Rabon was ordered to pay child support. (T. p. 103, lines 18-23.)

After her separation from Appellant, Rabon no longer spoke to him, other than to discuss their son. (T. p. 83, lines 22-24 and p. 104, line 12.) During her marriage to Appellant, Rabon became friends with James Herring, who was her husband's employee. (T. p. 84, line 5 – p. 85, line 8.) Rabon and Herring saw each other on a weekly basis, doing odd projects together, such as planting flowers or putting up Christmas lights. (T. p. 85, line 22 – p. 86, line 5.) Though she mostly stopped communicating with her

husband after her separation, she continued her friendship with Herring. (T. p. 86, lines 17-20.)

Rabon testified she would see Herring at unexpected times, however, such as sitting in the parking lot of her apartment complex, or attending an open house for a home she was showing. (T. p. 86, line 21 – p. 87, line 22.) On two occasions, Herring also stopped by her realty office "for a visit." (T. p. 89, lines 4-9.) Rabon thought the visits were strange, as she had not invited Herring to these events, and he was out of place at these locations. (T. p. 89, lines 10-19.) Rabon testified about another unusual instance in which her whereabouts appeared to be being tracked. (T. p. 105, lines 22.) Rabon prepared a care package for her son Dalton and sent it to Appellant's home. (T. p. 105, lines 16-20.) A few days later, she was shopping in her closest Walmart in Florence, and Appellant approached her inside the store with the care package in hand. (T. p. 106, lines 1-9.) Appellant pushed the package into her chest, telling her their son did not want it. (T. p. 106, lines 1-2.) Rabon did not know how Appellant knew where to find her at exactly that moment in order to return the package. (T. p. 106, line 20.)

Keith Caulder testified he has known James Herring for approximately twenty-five years. (T. p. 110, lines 8-10.) They had mutual friends, and they would hang out together. (T. p. 110, lines 12-16.) In October of 2010, Caulder's aunt informed him Herring was looking for him to discuss a job. (T. p. 111, lines 1-2.) Caulder instructed his aunt to tell Herring he would be home soon to discuss it, and Herring arrived within five to ten minutes after Caulder returned home. (T. p. 111, lines 4-18.) Herring told Caulder he was offered money to kill someone. (T. p. 111, lines 23-24.) According to Caulder, Herring was going to meet someone the next morning to be paid, and then they were to go to the intended victim's house, park behind a barn and wait for him to get

home. They would then kill him and make it look like a robbery. (T. p. 112, lines 3-7 and p. 115, line 15.) They would be paid $3000 for the job, and the victim lived in Florence. (T. p. 112, lines 15-24.) In the middle of the conversation, Herring received a phone call and had to leave, saying he would call Caulder later that night. (T. p. 113, lines 15-16.) Caulder thought about Herring's offer for about an hour, and then went to the Sherriff's Department. (T. p. 113, lines 18-19.) Herring called Caulder later that night, but Caulder did not answer his phone. (T. p. 120, lines 12-13.)

Rabon's son from her first marriage, James Carlyle Rabon Jr., (Carlyle) also testified at trial. (T. p. 133, lines 16-20.) Carlyle moved in with Appellant and his half-brother Dalton after his mother moved out of the home. (T. p. 134, lines 7-13.) Carlyle testified James Herring also moved in with Appellant and his brother after the separation. (T, p. 135, lines 16-20.) Carlyle testified Appellant made many disparaging remarks about his mother while he lived there the summer after she moved out, and at one point enlisted Carlyle's help in surveilling his mother at Parrot's house. (T. p. 137, lines 4-16.) They arrived at the property around midnight, snuck up on the house, and watched the house until the next morning in order to videotape his mother leaving. (T. p. 137, line 18 – p. 138, line 10.) Carlyle testified Appellant knew how to find Parrot's home, despite its difficult location far off of a dirt road. (T. p.138, line 22 – p. 139, line 17.)

Carlyle overheard conversations between Appellant and Herring, in which Appellant asked Herring, "Will he do it? How much will it cost? Will he do it for $2000? Question of that sort." (T. p. 140, lines 12-14.) Carlyle was not certain what Appellant was talking about at the time, though he was concerned when Appellant asked him if he knew where he could get a silencer. (T. p. 140, line 21 – p. 141, line 4.) Appellant also

asked Carlyle if he knew anyone who would "fuck Randy up." (T. p. 140, lines 13-14.) Carlyle had been asked to accompany Herring to assault Parrot on one occasion, but the attempt failed. (T. p. 154, line 2 – p. 156, line 19.)

Carlyle finally realized Appellant's intentions after law enforcement came out to speak with Appellant following Caulder's report. (T. p. 140, lines 23-24.) Appellant told Carlyle the plan was to have someone block the driveway of Parrot's house and hide. When Parrot drove up and exited his car to remove the blockage, the assailant would shoot and kill him. (T. p. 142, lines 11-19.) Shortly after law enforcement began their investigation and Appellant told Carlyle about the plan to kill Parrot, Carlyle moved out of the house. (T. p. 143, lines 16-19.) Carlyle later learned Appellant bailed out Herring after his arrest related to this case. (T. p. 143, line 20 – p. 144, line 3.)

ARGUMENT

I.

Though unpreserved for review, Wharton's Rule did not preclude the conviction of conspiracy to solicit murder, regardless of whether co-defendants were ultimately acquitted of an additional solicitation charge, because South Carolina does not recognize Wharton's Rule as controlling law. Even if this Court does recognize Wharton's Rule, the rule is inapplicable here, because more than the minimally necessary actors were implicated in the commission of the crimes. (Appellant's Issue II)

Appellant's argument concerning the conspiracy charge is a shifting house of cards in which the failure to convict on one crime compels an abandonment of all others. Appellant fails to understand the nuances of conspiracy and solicitation crimes, however, particularly when a co-defendant is tried and exonerated of one of the crimes charged. Added to the confusion is an archaic tenant of conspiracy law, which is not applicable to the facts at hand. Nonetheless, the trial court judge properly denied Appellant's motions for a directed verdict and new trial. His ruling should be affirmed.

Failure to Preserve Issue for Review

As a preliminary matter, Appellant failed to preserve his argument for appellate review. Appellant's argument that Wharton's Rule prohibited his conviction for conspiracy was raised for the first in his motion for a new trial. A defendant may not use a motion for a new trial to raise an issue for the first time. State v. King, 334 S.C. 504, 510, 514 S.E.2d 578, 581 (1999). In order to be timely, an objection usually must be made at the earliest possible opportunity. Scott v. Porter, 340 S.C. 158, 167, 530 S.E.2d 389, 393 (Ct. App. 2000). Moreover, while a party need not use the exact name of a legal doctrine in the trial court in order to preserve it for appellate review, it must be clear that an argument has been made on such ground. State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691 (2003). Given the nature of the Wharton's rule argument, which will be discussed in

detail in the following section, the proper time for the objection to the conspiracy charge on that basis would have been at the close of the State's case, during Appellant's motion for a Directed Verdict. Instead, Appellant's directed verdict motion was based entirely on the sufficiency of the evidence. (T. pp. 176-179.)

Moreover, after the verdicts were returned, Appellant moved for a new trial on the basis of inconsistency of the verdicts after the jury acquitted him and his co-defendant of the solicitation charge:

> At this time, Your Honor, I'd like to make a motion for the thirteenth juror. This is clearly an inconsistent verdict form that was returned.
>
> Your honor, the defendant, Mr. Moran, was charged with solicitation to commit a felony and charged with conspiracy. Your Honor, clearly that has to be two or more persons involved in a crime for it to be a conspiracy. There was no other defendant charged with conspiracy.
>
> Your honor, by the fact that the co-defendant was found not guilty of solicitation, that clearly – and as well as Mr. Moran found not guilty for solicitation, that is clearly an inconsistent verdict for this jury to return a finding of guilty for the conspiracy charge.

(T. p. 240, lines 4-17.) If any argument could be inferred from the objection presented, it would be because Appellant was acquitted of the solicitation charge, it was impossible for him to have been convicted of the conspiracy charge without a co-defendant. Alternatively, he appears to have argued the crimes merged, and his acquittal of solicitation should have also acquitted him of conspiracy to solicit. The judge denied the motion, responding:

> My understanding of the law and my reading of the law is that inconsistent verdicts don't—I mean exist anymore or exist in this state. The conspiracy charge doesn't say he conspired – the indictment doesn't say that he combined or conspired with only this individual.

> Individuals can be indicted on conspiracy without naming who the conspiracy was with, and my charge to the jury was that they could find him guilty on one charge and not the other, find him not guilty on both charges or find him guilty on each charge.

(T. p. 240 line 24 – p. 241, line 8.) The trial judge ruled solely upon the scope of Appellant's objection, which was concerning the consistency of the charges. At no point does Appellant mention Wharton's Rule, nor does he approximate a Wharton's Rule argument, which might sound something like "The conspiracy charge was improper because the underlying crime is already conspiratorial in nature." Appellant broached the Wharton's rule argument only in his post-trial motion, and Judge Brown did not rule on that issue in his Order denying the motion, dated October 28, 2014. Appellant cannot argue inconsistency of verdicts, or merger of charges, at the trial level and then introduce the Wharton's rule argument in his motion for new trial and appeal. See State v. Hudgins, 319 S.C. 233, 237, 460 S.E.2d 388, 390-391 (1995) (A party cannot argue one ground below then argue another on appeal.). For all these reasons, the argument advanced on appeal was not raised and ruled on below and therefore was not preserved for review by this court. See State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005).

Inapplicability of Wharton's Rule

Should the court conclude the issue was preserved, however, the State submits Wharton's Rule is inapplicable. The Rule is somewhat complicated: "...when the law says, 'a combination between two persons to effect a particular end shall be called, if the end be effected, by a certain name,' it is not lawful for the prosecution to call it by some other name; and when the law says, such an offense—e.g., adultery—shall have a certain punishment, it is not lawful for the prosecution to evade this limitation by indicting the

offense as conspiracy." Iannelli v. United States, 420 U.S. 770, 773, 95 S. Ct. 1284, 1288, 43 L. Ed. 2d 616 (1975) (citing 2 F. Wharton's Criminal Law § 1604, p. 1862 (12th ed. 1932)). In sum, Wharton's Rule prohibits a conspiracy charge when the underlying crime requires collusion between actors. The Rule prevents the State from bolstering the charges of one evil by claiming it is actually another, or in other instances, charging two crimes for the same activities.[1] For example, Wharton's Rule would prohibit a charge for conspiracy to commit adultery because two actors are necessarily required to act in concert to commit adultery.

The courts have acknowledged the Rule's existence, but have also been hesitant in its application. "Wharton's Rule reflects an era where conspiracy law was still developing, and it traditionally applied to offenses such as adultery, incest, bigamy, and dueling that were 'characterized by the general congruence of the agreement and the completed substantive offense ... .'" U.S. v. McNair, 605 F3rd. 1152 (2010) (quoting Iannelli, 420 U.S. at 782.) "Wharton's Rule is, to some extent a relic of the discredited merger doctrine and should be interpreted narrowly. ... The Rule does not forbid charging both a conspiracy and the substantive offense, even when it applies as it merely forbids sentencing on both counts." United States v. Previte, 648 F.2d 73, 77 (1st Cir.1981); United States v. McNair, 605 F.3d 1152, 1215 (11th Cir. 2010).

In South Carolina, the courts have referred to Wharton's Rule in their analysis, but have declined to apply it. In State v. Ferguson, the court rejected Wharton's Rule as

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[1] Iannelli, at 785. "The substantive offense therefore presents some of the same threats that the law of conspiracy normally is thought to guard against, and it cannot automatically be assumed that the Legislature intended the conspiracy and the substantive offense to remain as discrete crimes upon consummation of the latter."
Iannelli, at 792 Justice Douglas dissent: "Wharton's Rule in its original formulation was rooted in the double jeopardy concern of avoiding multiple prosecutions."

applied to the charge of conspiracy to set up a numbers lottery, stating, "it is true that in some cases where concerted action is necessary, as for example in certain sexual offenses, it is not permitted to charge one in the same indictment with a conspiracy and also with the substantive crime. The setting up of a lottery, however, is not necessarily one which requires concerted action. One person may set up a lottery or expose it to be played." State v. Ferguson, 221 S.C. 300, 303, 70 S.E.2d 355, 356 (1952).

In State v. Wells, 249 S.C. 249, 257 153 S.E.2d 904, 908 (1967) two former practicing naturopaths were charged with conspiracy to commit the crime of abortion. In that case, Wells gave a woman who was four months pregnant a series of injections to purposely cause her to miscarry. Id. at 254, 153 S.E.2d at 906. When the miscarriage did not occur, he referred her to co-defendant Jones, who would meet her in a hotel room and open her cervix with an instrument in an attempt to abort the pregnancy. Id. at 255, 153 S.E.2d at 907. The procedure did not cause an abortion, but did cause massive hemorrhaging and infection, requiring the woman to seek medical care. Id. There was no direct evidence to prove any meeting, communication or agreement between Wells and Jones. Id.

On appeal, Wells argued Wharton's Rule prohibited the conspiracy to commit abortion charge because the crime necessarily involved a direct agreement or involvement of one conspirator with another. Id. at 256, 153 S.E.2d at 907. The court refused to recognize the application of the rule, stating, "Even if it be conceded that such rule be sound, it clearly has no application to this case." State v. Wells, 249 S.C. 249, 257, 153 S.E.2d 904, 908 (1967). The court went on to say:

> We think it perfectly obvious that the foregoing 'substantive offense' which was the object of the alleged conspiracy can be committed by one individual. For this

> reason, the rule relied upon by appellants does not apply. The test under the rule is not whether the woman actually participated, but whether the substantive offense could be committed without any action on her part. But, even assuming that the substantive offense could not have been committed without the active participation of Franklin, the rule still would not apply because it is stated that, "*where more parties participate in the conspiracy than are logically necessary for the commission of the substantive offense contemplated by the conspiracy, the Wharton rule does not apply.*"

State v. Wells, 249 S.C. 249, 258, 153 S.E.2d 904, 908-09 (1967) (emphasis added). Wharton's Rule was later mentioned in State v. Crawford, 362 S.C. 627, 608 S.E.2d 886 (2005), but again the Court declined to apply it. As of yet, Wharton's Rule is not the rule of law in South Carolina.

In the instant case, Appellant was charged with two crimes: 1) conspiracy to solicit murder, and 2) solicitation of murder. In these particular crimes, two distinct evils are afoot. In the first, the State alleged Appellant **conspired with another** to hire someone to commit the murder. In the second, the State tried to show Appellant and co-defendant **attempted to hire** someone to commit the crime. The crimes are not merged together, and conviction of one is not inconsistent with conviction of the other. Similarly, acquittal of one is not inconsistent with conviction of the other.

The State alleged Appellant conspired with his co-defendant Herring to approach Caulder and hire him to aid in the murder of Randy Parrot. Police did not charge Caulder with any wrongdoing because he notified them of the plot. Nonetheless, three actors were implicated in the plan to kill Parrot, but two crimes were committed: the conspiracy between Appellant and Herring to hire a hit man, and Appellant and Herring's efforts to hire Caulder for the job.

Appellant argues Wharton's Rule precludes conviction of the conspiracy charge "because the unlawful act – solicitation to commit murder—requires the participation of more than one person." (Appellant's Brief p. 21.) Appellant further claims because he was acquitted of the solicitation charge, Double Jeopardy should have prevented his conviction of the conspiracy charge. Appellant misapplies Wharton's Rule to the facts of this case, however, and also fails to see the distinction between the crimes charged.

Here, facts are somewhat analogous to Wells. Appellant and Herring are the co-defendants, as were Wells and Jones, and the crime they are accused of committing involved the participation of a third actor. In Wells, the actor was the pregnant woman. Here, the third actor was Caulder. As was claimed in Wells, Appellant argues Wharton's Rule prohibits the conspiracy charge because the underlying crime, solicitation to commit murder (in Wells it was abortion), necessarily involves the participation of another. The court rejects Wharton's application, however, when "more parties participate in the conspiracy than are logically necessary for the commission of the substantive offense..." Wells, at 258, 153 S.E.2d at 909.

Appellant necessarily had to involve another (Herring **or** Caulder) to be charged with solicitation, but involving another to recruit a third (Herring **and** Caulder) was an escalation of his criminal wrongdoing. By contrast, had the evidence shown Appellant conspired with and attempted to hire only Herring to kill Parrot, Wharton's Rule may be a consideration in some jurisdictions. However, the court need not address whether South Carolina recognizes Wharton's Rule, because under the facts of this case, the Rule is inapplicable. Thus, Appellant's argument that Wharton's Rule precludes a conspiracy to solicit murder charge in this case is without merit.

Inapplicability of Double Jeopardy

Concerning Appellant's claim of Double Jeopardy because he was acquitted of the solicitation charge, but convicted of conspiracy to commit solicitation, Appellant misapplies the law to the underlying facts of the case. A conspiracy to commit a crime does not merge with the completed offense. State v. Rutledge, 232 S.C. 223, 101 S.E.2d 289 (1957) A conspiracy is a distinct offense in itself and punishable as such, notwithstanding that the object of the conspiracy has been accomplished. State v. Ferguson, 221 S.C. 300, 303-04, 70 S.E.2d 355, 356-57 (1952). Even the conspiracy statute contemplates such a scenario in which a person may be guilty of the conspiracy but not the underlying crime:

> The common law crime known as "conspiracy" is defined as a combination between two or more persons for the purpose of accomplishing an unlawful object or lawful object by unlawful means.
> ...
>
> A person who is convicted of the crime of conspiracy must not be given a greater fine or sentence than he would receive *if he carried out the unlawful act contemplated by the conspiracy and had been convicted* of the unlawful act contemplated by the conspiracy or had he been convicted of the unlawful acts by which the conspiracy was to be carried out or effected.

S.C. Code Ann. § 16-17-410 (emphasis added). As a sentencing guideline, the statute directs the judge to impose no more than the maximum based on a possible nonevent (a failure to convict, for example). The statute acknowledges the relationship between the conspiracy charge and the underlying crime for sentencing purposes, but that relationship

should not be confused with Double Jeopardy. See U.S. Const. amend. V ("No person shall be... subject for the same offense to be twice put in jeopardy of life or limb...").

In this case, the jury found the object of the conspiracy, the solicitation to commit murder, was not accomplished, and the jury acquitted the defendants. Two crimes were charged: conspiracy to solicit and the actual solicitation of the murder. Evidence clearly showed Appellant conspired with Herring to solicit someone to kill Parrot, as will be discussed in more detail in the following section. The State was unable to convince the jury beyond a reasonable doubt, however, Appellant and Herring solicited Caulder to commit the crime. In other words, the verdicts suggest the jury believed they plotted it, but did not believe they went so far as to actually hire the hit man. Appellant's acquittal of the solicitation charge is neither inconsistent nor preclusive of his conviction of the conspiracy charge. Indeed, the jury rightly believed Appellant guilty of some wrongdoing and convicted him on the charge they believed was more supported by the evidence.

II.

The trial court properly denied Appellant's motion for a directed verdict and new trial because ample evidence supported the jury's finding of Appellant guilty of conspiracy. (Appellant's Issue I)

Appellant contends the circuit court erred in denying his motion for a directed verdict, arguing the evidence did not support the charge. He cites relevant case law from South Carolina for this contention, but reaches a completely inapposite result.

"In criminal cases, the appellate court sits in review of errors of law only." State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). An appellate court, reviewing the denial of a directed verdict motion is concerned with the existence, or nonexistence of evidence, not its weight. State v. Evans, 376 S.C. 421, 424, 656 S.E.2d 782, 783 (2008). "On appeal from the denial of a motion for directed verdict, the evidence must be viewed in the light most favorable to the state." State v. Brown, 360 S.C. 581, 586, 602 S.E.2d 392, 395 (2004). Ultimately, the question is whether, in view of the evidence in the light most favorable to the State, a rational trier of fact could find all the elements beyond a reasonable doubt. State v. Robinson, 310 S.C. 535, 539, 426 S.E.2d 317, 318 (1992) (finding any rational trier of fact could have found all the elements of the crime beyond a reasonable doubt in affirming the denial of a motion for directed verdict and citing Jackson v. Virginia, 443 U.S. 307 (1979)). "Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error." State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776-77 (2011).

Appellant was charged with conspiracy to solicit murder. A conspiracy is the "combination between two or more persons for the purpose of accomplishing an unlawful object or lawful object by unlawful means." State v. Crocker, 366 S.C. 394, 621 S.E.2d 890, 896 (Ct. App. 2005). The primary element of a conspiracy charge is the agreement

or combination, and an overt act in furtherance of the conspiracy is not necessary to prove the crime. Id.; see also S.C. Code Ann. §16-17-410 (2003) (codifying common law crime of conspiracy). Thus, the conspiracy is complete when the agreement to commit an illegal act is formed. The State must prove Appellant agreed with another to solicit a third to commit murder. Once an agreement has been reached, the crime of conspiracy has been committed; no further act need take place. State v. Crawford, 362 S.C. 627, 639, 608 S.E.2d 886, 892 (Ct. App. 2005). Solicitation to commit a felony requires the actor, with the intent that another person commit a crime, have enticed, advised, invited, ordered, or otherwise encouraged that person to commit a crime. See State v. Smith, 316 S.C. 53, 447 S.E.2d 175 (1993).

At trial, the State presented the following evidence indicating Appellant actively participated in the conspiracy to solicit murder, or from which his participation could be inferred:

1) Both Carlyle and Caulder testified about the existence of a plot to kill Parrot, and the two men's testimonies corroborated each other.
2) Carlyle testified Appellant knew where Victim lived and asked Carlyle to assist him in sneaking up on Victim's house to conduct surveillance. (T. p. 137, lines 11-23.)
3) Carlyle testified he overheard Appellant and Herring talking in the kitchen of their house. Appellant asked Herring, "Will he do it? How much will it cost? Will he do it for $2000?" (T. p. 140, lines 9-14).
4) Carlyle testified Appellant asked him if he knew where he could get a silencer. (T. p. 141, lines 2-3.)

5) Carlyle testified Appellant asked him if he knew anyone who "would fuck Randy [Parrot] up?" (T. p. 141, lines 13-14.)

6) Carlyle testified Appellant discussed the plot against Parrot after law enforcement came to their house to investigate Caulder's report. Appellant told Carlyle "the plan was somebody was going to hide at the end of Randy's driveway, throw a large object in the driveway. Somebody would be hiding in the woods. When Randy stopped and exited his vehicle to get to whatever was blocking the driveway, somebody was going to jump out and shoot him dead." (T. p. 142, lines 14-19.)

7) Caulder testified Appellant's employee and friend Herring "went into detail about somebody had offered him money to kill somebody." (T. p. 111. lines 22-24.)

8) Caulder testified they were to meet the third person the next morning to get paid, then they were to go kill the man and make it look like a robbery. (T. p. 112, lines 3-7.)

9) Caulder did not know much detail about the crime, but was told the Victim lived in Florence, and that they would park behind a barn, and then make it look like a robbery. (T. p. 115, lines 12-17.)

10) Rabon testified Herring would appear at unexpected times and places, such as her place of business and outside her apartment complex. (T. pp.86-88.)

11) Rabon testified Moran approached her in Walmart to return a care package to her, when no prior arrangements had been made to meet. (T. p. 106, lines 3-21.)

Taken in the light most favorable to the State, the evidence certainly shows Appellant formed an agreement with his co-defendant to solicit Caulder to kill Randy Parrot. As the trial judge concluded, "the Jury, weighing the evidence and testimony in this case, could have reasonably found that Moran conspired with Herring, but never acted to solicit someone to carry out the plan." (Order Denying Motion for New Trial pp. 4-5.) The testimonies of Carlyle and Caulder filled in the missing details of each other to convince the jury of the co-defendants' plan. The fact that Caulder never had dealings with Appellant does not lessen Appellant's culpability.

Appellant argues "[i]t is thus impossible for Mr. Moran to have conspired to commit an unlawful act that the jury found he did not commit. The jury's verdict is illogical, and the Court should not let it stand." (Appellant's Brief p. 18.) As stated in Crawford, the State need only show Appellant formed an agreement with another to solicit for the conspiracy charge to stand. The State need not show Appellant actually did solicit someone. The actual solicitation is a separate charge, and Appellant was found not guilty. Fortunately for Mr. Parrot, Appellant was unsuccessful in his attempts to solicit someone to kill him. Our jails are undoubtedly full of criminals who conspired to commit some heinous crimes but were thwarted in their attempts to do so for various reasons. The outcome, in which Appellant is found guilty of conspiracy but not the underlying charge, does not make the verdict illogical; it makes the jury reasonable.

The circuit court properly considered the existence of evidence from which Appellant's guilt could be determined, and the record amply supports the denial of Appellant's directed verdict motion and motion for a new trial. Accordingly, the circuit court's ruling should be affirmed, and the jury's conviction should stand.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

August 4, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED

AUG 03 2015

SC Court of Appeals

Appeal from Marion County
The Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No. 2014-002331

THE STATE,

Respondent,

v.

Darryl Wayne Moran,

Appellant.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing one copy of the same in the United States mail, postage prepaid, addressed to:

John S. Nichols, Esquire
Bluestein, Nichols, Thompson & Delgado
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I further certify that all parties required by Rule to be served have been served. This 4th day of August, 2015.

Anne Mueller

ANNE MUELLER
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