STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
The Honorable Deandra Jefferson, Circuit Court Judge
Appeal Case No. 2013-002478

THE STATE,

RESPONDENT,

V.

JAMES K. BETHEL,

APPELLANT.

INITIAL BRIEF OF RESPONDENT

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1. Whether the trial judge erred in ruling that the defendant was not entitled to an involuntary manslaughter charge because some evidence of malice existed in the case?

2. Whether the court erred in overruling the defendant's objection to a witness's testimony that the defendant or his associates made gang signs when the State agreed pre-trial to make no mention of gang affiliation and such evidence was inadmissible pursuant to Rules 401, 402, 403, and 404 of the South Carolina Rules of Evidence?

RESPONDENT'S COUNTERSTATEMENT OF ISSUE ON APPEAL

1. Whether the trial court abused its discretion in denying Appellant's request for an involuntary manslaughter charge when there was not sufficient evidence to support an involuntary manslaughter jury instruction and any error in not granting Appellant's request for the instruction was harmless?

2. Whether the trial court abused its discretion in overruling the defendant's objection to a witness's statement that he observed what he believed were gang signs when the objection was not properly preserved for appeal and where any error by the trial court in not striking the statement was harmless?

STATEMENT OF THE CASE

On November 4-8, 2013, Appellant James Kevin Bethel ("Appellant") was tried by a jury for the murder of GaWayne Franklin and the attempted murder of Kendron Hope. Appellant was tried in the Richland County Court of General Sessions before the Honorable Deandre Jefferson, Circuit Court Judge. Tristan Shaffer represented Appellant. The State was represented by Deputy Solicitors Kathryn Campbell and Assistant Solicitors Jeremiah Shellenberg and Meghan Walker, all of the Fifth Judicial Circuit Solicitor's Office.

On November 8, 2013, Appellant was convicted of one count of murder and one count of attempted murder. (2nd Tr. 622). He was sentenced to fifty years confinement for the murder conviction and thirty years confinement for the attempted murder conviction, both to be served concurrently. (2nd Tr. 635-36). Before this Court is Appellant's direct appeal of his convictions. Appellant requests this Court reverse his convictions and order a new trial. The State respectfully requests this Court deny Appellant's appeal and affirm his convictions.

STATEMENT OF FACTS

On August 19, 2012, Appellant shot the victim, Gawayne Franklin, in the back of the head. The bullet went upwards, from left to right, and from front to back. (2nd Tr. 219). The forensic pathologist noted that the bullet obliterated the part of the brain it went through, and the bullet went through the cerebellum and the main part of the brain. (2nd Tr. 219). The victim would have immediately lost consciousness and that would have caused death. (2nd Tr. 219, 220).

Background

On the early morning of August 19, 2012, the murder victim, Gawayne Franklin, was working as a bouncer at Mr. Lucky's Gentleman's Club in Columbia. (Tr. 237). Franklin was working inside and was unarmed. (Tr. 237).

William Ingram, who was working as the doorman at Mr. Lucky's that night, testified that he had a run in with Appellant's group when they came into the club. (Tr. 267). He noted that an individual wearing a dark shirt, black pants, and black boots came into the club with a liquor bottle. (Tr. 267). He noted that bringing liquor into the club was only allowed if the manager gave permission, and the manager did allow for the man to bring in the bottle. (Tr. 268). Ingram testified that the group caused problems, and there were multiple times that security was ready to kick them out. (Tr. 268).

Inside the Club

On that evening, Appellant visited the club with three other males and two females. (Tr. 238, 248, 2nd Tr. 316, 330, 385, 417). David Richardson, one of the victim's friend who was in the club that night, noted that he observed

Appellant's group doing things that would normally get people kicked out of Mr. Lucky's. (Tr. 238).

Appellant's Group Gets Kicked Out

Eventually, Appellant's group was kicked out of Mr. Lucky's. (Tr. 240). Richardson noted that outside security came in and escorted the group out of the club. (Tr. 240). Richardson testified that as the group was being escorted out of the club, the last person nudged the victim. (Tr. 241). The victim then followed the group outside. (Tr. 241). As Richardson and the victim got outside, he noted there was arguing and a number of people in an excited state. (Tr. 242). Richardson testified that one of the guys from Appellant's group intimated that he knew where the victim lived, and the victim responded that "get quote from 242). Ingram testified that Appellant's group was let out the club. Ingram and the victim were among the bouncers who were pushing the group out of the club. (Tr. 269).

Confrontation Outside the Club

After that interaction, the victim and Richardson both jumped off of the side of the balcony in front of the club. (Tr. 242). In doing so, they got down to the same level as Appellant's cousin Ernest, who was wearing a yellow shirt and a yellow hat. (Tr. 242, 2nd Tr. 269). Ingram testified that Appellant was in the group being kicked out of the club. (Tr. 270). As they were going down the balcony, the group that was being escorted out was arguing with security. (Tr. 270). Ingram testified that Kedron Hope, who was in charge of outside security that night, had to spray mace at one of the guys in the group so they would

continue moving towards the parking lot. (Tr. 270). Ingram noted that at that time, both Appellant and the victim were on the balcony. (Tr. 270).

Clinton Brown, one of the outside security guards at Mr. Lucky's, testified that he was in the parking lot area until the disturbance on the balcony occurred. (2nd Tr. 37). When the disturbance started, Brown headed towards the deck area. (2nd Tr. 37). Brown testified that he saw Franklin when he came out of the club. (2nd Tr. 37).

Brown testified that several individuals were coming out with the disturbance, and loud threats were made. (2nd Tr. 38). Brown indicated that he went up to the balcony. (2nd Tr. 39). He noted that they proceeded to move the group down the ramp, but the altercation started to push back up the ramp. (2nd Tr. 40-1).

Kedron Hope, the supervisor of outside security on August 19, testified that some individuals were allowed into Mr. Lucky's without going through a full pat down when they were allowed by either management or the bouncers. (2nd Tr. 74). Hope testified that he on that day, there were a few times that people were brought outside the club, talked to, and were then allowed to return to the inside of the club. (2nd Tr. 74). Hope indicated there was one group that caused most of the problems that morning. (2nd Tr. 75). It consisted of four males, and later two females. (2nd Tr. 75). Those individuals were talked to at some point, but were allowed to stay in the club. (2nd Tr. 75). Hope also stated that management allowed Appellant to walk into the club with a bottle of liquor. (2nd Tr. 75-6).

Within an hour of Appellant's entry with the bottle of liquor, He and his group were escorted out of the club. (2nd Tr. 76). Hope, Rodney White, and Brown went up the ramp to meet the group who were being escorted out of the club. (2nd Tr. 76). Hope testified that it was actually two groups leaving at the same time. He noted there was some arguing between the bouncers and a couple of patrons that were upset with the group that was leaving. (2nd Tr. 76). Hope testified that the groups were separated, and he was following behind all of them to make sure they got out. (2nd Tr. 76). Some of the group walking down the ramp tried to climb back over the ramp. (2nd Tr. 76). Hope sprayed one of the patrons with pepper spray because they would not go to the parking lot as instructed. (2nd Tr. 77). He noted that one guy went down to the ground holding his face, but the other ran out. (Tr. 77). Hope noted that he sprayed a short guy with dreads who was wearing light colored clothing. (Tr. 77).

Hope testified that the guy from the group wearing yellow was already in the parking lot, and he and his group was yelling at the bouncers what they were going to do to them, specifically to Franklin. (Tr. 78). Hope did not recall exactly what each person said, but he did remember that Franklin was saying that he was right there. (Tr. 78).

Hope testified that Franklin climbed over the front of the balcony to get to the front of the parking lot. (Tr. 78).

While Hope was walking the two gentlemen he has sprayed down the ramp to the parking lot, he saw Appellant come around behind Franklin and shoot him in the head. (Tr. 79).

> I was walking directly out and was kind of paying attention to the two guys in front of me, but they were in my peripheral, probably from the distance of here to the lawyers' tables there, and as I was proceeding forward, I seen him [Appellant] reach down like into his pants or — and pull something out, and when I seen him pull his hand up and put it to his head, I seen the muzzle flash.

(2nd Tr. 79, ll 14-20). Hope testified that Franklin was not armed, and he did not see Appellant come up behind him. (2nd Tr. 80). At that time, Franklin was talking with the gentleman in yellow, telling him to go to his vehicle. (2nd Tr. 80). Franklin dropped instantly. (2nd Tr. 80).

Rodney White, who was also working outside security on the morning of the shooting, testified that Appellant's group was escorted out of the club around 3:30 a.m. (2nd Tr. 255-57). White was involved in escorting the group down the ramp into the parking lot. (2nd Tr. 257). White noted that they started a commotion on the deck, and one of the security officers sprayed mace. (2nd Tr. 257-58). White indicated that Appellant was near him when the mace was sprayed, and White did not smell or feel any mace. (2nd Tr. 258, 260). White testified that he saw the victim go over the balcony, and the victim was confronting the group because they did not seem like they wanted to leave. (2nd Tr. 258, 260). White then saw Appellant come from behind the victim and shoot him in the head. (2nd Tr. 258). White noted that the victim was not even talking to Appellant. (2nd Tr. 258-59).

The Initial Shooting[1]

Richardson testified that the next thing he knew, he heard two gunshots. (Tr. 243). He did not see them. (Tr. 243). Richardson looked over at the victim, and saw that he was hit. (Tr. 143). When Richardson eventually got over to the victim, the victim was not breathing. (Tr. 243). According to Ingram, five to seven seconds after the mace spraying, Appellant shot the victim. (Tr. 271). Ingram also identified Appellant in court.

Brown testified that he saw Franklin when he went over the ramp. (2nd Tr. 41). Brown was on the balcony at that time. (2nd tr. 41). Brown also saw an individual go run across and jump across the balcony. (2nd Tr. 41-2). Brown lost visual contact with that individual. (2nd Tr. 42). When he next saw that individual, he saw him right behind Franklin with his arm extended. (2nd Tr. 43). Brown indicated that it appeared he had a weapon, and Brown heard it discharge. (2nd Tr. 43). Brown stated that he heard two gunshots and saw the reaction to them. (2nd Tr. 43). He attempted to secure the scene and prevent people from leaving. (2nd Tr. 43-44). Brown also identified Appellant as the shooter he saw that night. (2nd Tr. 45).

Edward Simpkins, a manager at Mr. Lucky's that morning, testified that he spoke with Appellant that night in an effort to calm down Appellant's crowd. (Tr. 131-32). Appellant and his group were leaving, and the victim followed the group out to make sure they were escorted out of the club. (Tr. 132). Frederick

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[1] Two videos of the incidents leading up to the shooting, the shooting, and the early part of the chase were entered into evidence at trial as State's Exhibit 71 and State's Exhibit 157.

Simpkins, a manager of Mr. Lucky's that morning, testified that he saw Appellant's group engaged in multiple interactions (at least five) with the bouncers in the club. (2nd Tr. 123-25). He noted that he talked with Appellant that night, including at the time the rest of Appellant's group was being ejected from the club. (2nd Tr. 126). Simpkins testified that the victim was arguing with another from Appellant's group as they were being ejected from the club. (2nd Tr. 126-27). Simpkins noted Appellant then started arguing with the victim. (2nd Tr. 127). Simpkins also indicated that it appeared that Appellant was clutching his left side like he might be carrying a weapon. (2nd Tr. 131).

The Chase

After Appellant shot the victim, he started running. White testified that Hope told Appellant to freeze, and Appellant fired at him. (2nd Tr. 259). Hope returned fire. (2nd Tr. 259). Richardson testified that he heard more gunshots. (Tr. 244). When he looked up, he saw one person running and one of the security guards outside was shooting at him. (Tr. 244). He noted the security guard chased after the guy. (Tr. 244).

Brown testified that he saw the shooter running away from the scene. He also observed Hope discharging his weapon in an attempt to subdue the subject to try to eliminate the threat. (2nd Tr. 44). Hope testified that in response to the shots fired, he drew his weapon. (2nd Tr. 80). Appellant fired at Hope twice, and Hope returned fire. (2nd Tr. 80). Appellant then ran away from Hope. (2nd Tr. 80). Hope followed.

Hope testified that during the chase, Appellant turned and fired two more rounds at Hope before Appellant started running towards a church that was nearby. (Tr. 81). Hope then fired again, and Appellant fell. (Tr. 81). Hope surmised that he shot Appellant. (Tr. 81). Hope testified that Appellant did not stay down; he picked himself up and ran around the side of the church building. (Tr. 82). Hope indicated that he fired two or three more rounds closer to the building. (Tr. 82-3). The chase continued around the church building. Hope noted that Appellant eventually was able to escape through a fence and head towards an apparent apartment complex nearby. (Tr. 83-7).

Hope testified he located a shell casing near where the victim was shot the next day. (2nd Tr. 93).

Law Enforcement Investigation

Appellant was found heavily bleeding with wounds to his back at a condo complex near Mr. Lucky's. (2nd Tr. 156-59).

Two .380 caliber cartridge casings were found at the scene, and a .380 caliber bullet was recovered from the victim during autopsy. (Tr. 220-21, 2nd Tr. 203). The two .380 cartridge casings were fired by the same gun. (2nd Tr. 204). Ten .40 caliber fired cartridge casings found at the scene were tied to Hope's gun. (2nd Tr. 201-02).

Law enforcement was also able to track Appellant's path from Mr. Lucky's to where he was found. (See Tr. 151-75, 178-91). During the investigation, law enforcement was able to locate a black t-shirt worn by Appellant that evening, along with tennis shoes and a pair of pants containing $1500.24 along the path

that would have been taken by Appellant in his escape from the scene of the shooting. (Tr. 154, 157, 160).

Appellant gave two statements to law enforcement while he was in the hospital. During the first statement, Appellant claimed that he was robbed and shot while at a neighborhood that was approximately four miles away from Mr. Lucky's. (2nd Tr. 271-75). When it was explained to Appellant that he was found at a different condo complex, Appellant changed his statement to say that he was shot and robbed at that condo complex. (2nd Tr. 275). Appellant claimed that he was not at Mr. Lucky's that morning. (2nd Tr. 275). When law enforcement went back to the hospital to obtain a buccal swab from Appellant, he gave a verbal statement in which he again claimed that he was shot and robbed in a neighborhood that was three to four miles away from Mr. Lucky's. (2nd Tr. 239-40). Appellant again denied that he was at Mr. Lucky's that morning. (2nd Tr. 239-40).

Defendant's Case

Appellant presented testimony from several witnesses in his defense. Troy Griffin, who was at Mr. Lucky's with Appellant, testified there were two incidents between Franklin and Appellant's group inside the club. (2nd Tr. 316-19). First, Griffin claimed Franklin pushed him while they were inside the club. (2nd Tr. 316-17). Griffin noted the bouncers appeared to not want their group inside the club. (2nd Tr. 318-19). Second, he noted Franklin pushed him and Franklin pushed Appellant's cousin, Ernest later that morning, after the manager had intervened. (2nd Tr. 319-20). Griffin asserted that the two started seeking

information about what was going on. (2nd Tr. 320-21). Griffin claimed that Franklin threatened to beat up members of the group, and he indicated Appellant was trying to calm everything down. (2nd Tr. 321-22).

Griffin testified that the group moved out to the porch at some point. (2nd Tr. 322). Griffin was pepper sprayed near the top of the ramp. (2nd Tr. 322). He noted that before he was sprayed, he saw Appellant was talking with the manager, and Curtis was near Griffin. (2nd Tr. 323). Ernest was talking to Franklin. (2nd Tr. 323). Griffin did not see the shooting. (2nd Tr. 326).

Curtis Long, another of Appellant's friends at Mr. Lucky's that morning, testified that he also sensed the bouncers did not want his group at the club. (2nd Tr. 356). Long, who admitted that he got drunk that evening, indicated that at some point that morning, his group was no longer welcome in the club. (2nd Tr. 356, 358-59). He noted that he was talking with the manager in the hallway, and the two other guys in the group were forced out of the club by the bouncers. (2nd Tr. 359-60). Long testified there was a lot of commotion between his group and the bouncers, and he further indicated Appellant was trying to talk to the bouncers to find out why the group was being expelled from the club. (2nd Tr. 360). Long stated that when he was maybe halfway down the ramp outside the club, he was sprayed with mace. (2nd Tr. 360-61). He did not know where Appellant was at that time, but he did believe Griffin was nearby when the mace was sprayed. (2nd Tr. 361). Long also did not see the shooting. (2nd Tr. 361).

Appellant testified that he went to Mr. Lucky's with his cousin Ernest and his friends Griffin and Long. (2nd Tr. 385). He noted that he learned that his

son's mother was a dancer at the club that morning. (2nd Tr. 385-86). Appellant testified that he paid for everyone to get into the club, and he got a private dance in the back room. (2nd Tr. 386-87). Appellant also purchased a bottle of Ciroc. (2nd Tr. 388). Appellant indicated that he saw Franklin say something to Ernest and Griffin. (2nd Tr. 388). Appellant also noted that the manager later asked Appellant if he could speak with the two to calm them down a bit. (2nd Tr. 388). Appellant stated that he did talk with them and told them to calm down. (2nd Tr. 388).

Appellant testified that he saw Franklin get into with Ernest and Griffin more in the club. (2nd Tr. 389). Appellant also testified that while he entered the club unarmed, he learned that Long had brought one of Appellant's gun into the club from the truck. (2nd Tr. 389-90). Appellant indicated that he got the gun (a .380 LCP Ruger) from Long in the bathroom, and he put it in his back pocket. (2nd Tr. 390). At some point, Appellant went outside and retrieved a bottle of vodka from the truck. (2nd Tr. 391). He was allowed back into the club with the manager's permission. (2nd Tr. 393).

Appellant indicated that Ernest was hyped up in the club, and he attempted to calm him down at times. (See 2nd Tr. 393-94). Appellant also noted that after a conversation with a dancer, he became concerned about possibly being robbed. (2nd Tr. 395-97). He also noted that he talked with the manager that night. (2nd Tr. 394, 397). During one of those conversations in the hallway, Appellant observed Ernest and the rest of his group arguing. (2nd Tr. 397). Appellant asserted that he attempted to ask one of the bouncers what was going

on, and the bouncer started talking trash in response. (2nd Tr. 398). According to Appellant, the bouncers were trying to force Griffin and Ernest out of the club, and in doing so, they were talking trash and making threats against them. (2nd Tr. 399). Appellant indicated that he attempted to calm those in his group down, and he was encouraging them to leave. (2nd Tr. 399-400).

Appellant testified that his group was maced once they were outside on the ramp. (2nd Tr. 402). He noted that when the mace was sprayed, Ernest was in the parking lot, and Appellant was near Long and Griffin. (2nd Tr. 401-02). He also noted that Franklin and another big guy jumped down from the ramp and went towards Ernest. (2nd Tr. 403-04). Appellant testified that mace was sprayed on the ramp in front of them, and Appellant was hit in the eyes. (2nd Tr. 406). He noted that he tried to rub his eyes, which made his vision worse. (2nd Tr. 406). Appellant panicked and he pulled the gun out of his back pocket. (2nd Tr. 406). Appellant indicated that he walked towards his cousin's and the other voices in the parking lot. (2nd Tr. 406). He claimed that he heard a gunshot. The gunshot scared him, and as soon as he heard it, he tensed up and shot his gun. (2nd Tr. 406-07). Appellant believed there were approximately five seconds between the time in which he was sprayed with mace and when he fired his gun. (2nd Tr. 407-08).

Appellant testified that after he fired his gun, he ran away from the gunshots. (2nd Tr. 408). He was shot while running away, and the shot knocked Appellant off of his feet. (2nd Tr. 408). Appellant then got up and tried to run again. (2nd Tr. 409). He indicated that he was shot again at that time. (2nd Tr.

409). Appellant noted that he dropped his gun at some point during this period. (2nd Tr. 409). Appellant also testified that he was not firing at the security guard, and he was only trying to get away from the person that was shooting at him. (2nd Tr. 409).

Appellant testified that he then ran around the church building, and at one point he was trapped between a building and a tall barbed wire fence. (2nd Tr. 409-11). He claimed that he kicked off his pants at the instruction of the guy shooting at him. (2nd Tr. 410-12). After kicking off his pants and shoes, he eventually was able to climb the barb wire fence and run towards an apartment building. (2nd Tr. 411-13). During cross-examination Appellant denied that he shot the victim in self-defense. (2nd Tr. 449).

ARGUMENT

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING APPELLANT'S REQUEST FOR AN INVOLUNTARY MANSLAUGHTER JURY INSTRUCTION. THE INSTRUCTION WAS NOT WARRANTED BY THE FACTS PRESENTED AT TRIAL, AND ANY ERROR IN NOT INSTRUCTING THE JURY ON INVOLUNTARY MANSLAUGHTER WAS HARMLESS.

Discussion at the Pre-Trial Hearing

During the jury charge conference, Appellant requested an instruction on involuntary manslaughter based upon State v. White.[2] (2nd Tr. 489). The trial court initially indicated that it did not find the charge was warranted.

> The Court: There is no evidence that he was involved with handling a weapon and accidentally discharged it. Involuntary manslaughter is negligence basically and you kill somebody, but you have to be acting lawfully basically. I just don't think there's any testimony to support involuntary manslaughter in this case.

(2nd Tr. 489, ll 15-20). After some discussion about whether a voluntary manslaughter charge was warranted, the trial court further explained why an involuntary manslaughter instruction was not warranted.

> But involuntary manslaughter has to be proven by the defendant unintentionally killing the victim without malice but while engaged in an unlawful activity not naturally tending to cause death or great bodily harm or that the defendant unintentionally killed the victim without malice while engaged in a lawful activity with reckless disregard for the safety of others. I just don't think that the facts in this case support involuntary manslaughter, but I think arguably it could support voluntary manslaughter.

(2nd Tr. 490, ll 14-22).

Appellant responded by asserting his argument in support of the charge was based upon the belief that Appellant was lawfully armed in self-defense, and

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[2] It is unclear what case Appellant is citing to in making this reference.

there was evidence that he was negligently handling the firearm while lawfully armed. (2nd Tr. 490). The trial court rejected this argument.

> Lawfully armed in self-defense means you have the license and you have the ability and the right to have a weapon where you had it. I don't think having a gun in a nightclub without a concealed weapon permit — even if he had one, he still shouldn't have had it in a club. You 9 keep it in your car in the glove box; right? You keep it in your house. I don't think you can bring it into a club and say that you were lawfully armed in self-defense.
>
> It's a funny way the case law is written because it's a— it ' s a weird kind of a dichotomy the way it's written because it's — it almost implies that whenever you're acting in self-defense you're lawfully doing it, but at the same time- we have a whole set of statutes that deal with firearms and your ability to carry them. And so I don't know that you can honestly in good faith say that you were lawfully armed in a nightclub without a concealed weapon permit and you weren't law enforcement.
>
> I'd have to — I have to roll that one over in my mind a little bit, but I don't — I don't think it would pass muster. But involuntary manslaughter is really about circumstances where there's negligence and there's an utter lack of malice or a failure of proof of malice, and this case is not — certainly does not factually support it.

(2nd Tr. 491, l 4 – 492, l 1).

The next morning, the trial court reiterated why it did not find an involuntary manslaughter charge was warranted.

> However, I will not be instructing involuntary manslaughter as it is not supported by the facts presented in this case.
>
> In order to establish involuntary manslaughter, it would have to be established that the defendant unintentionally killed the victim without malice but while engaged in an unlawful activity not naturally tending to cause death or great bodily harm. Clearly the evidence in the record is that malice did exist. There is evidence that he was engaged in an unlawful activity. However, there is no evidence that that unlawful activity would not naturally tend to cause death or great bodily injury or that the defendant

> unintentionally killed the victim without malice while engaged in a lawful activity with reckless disregard for the safety of others.
>
> There is his testimony that he unintentionally killed the victim. However, there is evidence of malice and there is evidence that there is — there is evidence that he was engaged in an unlawful activity, that being the possession of an unlicensed handgun in the parking lot of a — of an establishment.

(2nd Tr. 498, l 21 – 499, l 16).

The trial court instructed the jury on self-defense, accident, and voluntary manslaughter, but did not instruct the jury regarding involuntary manslaughter. (2nd Tr. 586-609). Appellant renewed his objection to the trial court not giving the instruction after the jury instructions were given. (2nd Tr. 610).

Standard of Review

"'An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion.'" State v. Williams, 367 S.C. 192, 195, 624 S.E.2d 443, 445 (Ct.App.2005) (quoting Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000)). Furthermore, "[t]o warrant reversal, a trial court's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." State v. Patterson, 367 S.C. 219, 232, 625 S.E.2d 239, 245 (Ct. App. 2006). "The law to be charged must be determined from the evidence presented at trial." Id. If there is any evidence to support the requested charge, the trial court should grant the request. Williams, at 195, 624 S.E.2d at 445. The evidence must be reviewed in the light most favorable to appellant. State v. Cottrell, 376 S.C. 260, 262, 657 S.E.2d 451, 452 (2008).

The presence of evidence to sustain a conviction for the crime of a lesser degree determines whether it should be submitted to the jury. State v. Rucker,

319 S.C. 95, 98, 459 S.E.2d 858, 860 (Ct. App. 1995) (citing State v. Funchess, 267 S.C. 427, 229 S.E.2d 331 (1976)); State v. Linder, 276 S.C. 304, 278 S.E.2d 335 (1981). Due process requires that a lesser included offense be charged when the evidence warrants it but only if the evidence would permit a jury rationally to find the defendant guilty of the lesser offense. State v. Patterson, 337 S.C. 215, 233, 522 S.E.2d 845, 854 (Ct. App. 1999). It is not error to refuse to charge the lesser included offense unless there is evidence tending to show that the defendant was guilty only of the lesser offense. State v. Geiger, 370 S.C. 600, 607, 635 S.E.2d 669, 673 (Ct. App. 2006) (citing State v. Tyndall, 336 S.C. 8, 518 S.E.2d 278 (Ct. App. 1999); State v. Thompson, 278 S.C. 1, 292 S.E.2d 581 (1982); State v. Mickle, 273 S.C. 71, 254 S.E.2d 295 (1979).

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). To constitute involuntary manslaughter, there must be a finding of criminal negligence. State v. Wigginton, 375 S.C. 25, 35, 649 S.E.2d 185, 190 (Ct. App. 2007) (citing State v. Crosby, 355 S.C. 47, 51-2, 584 S.E.2d 110, 112 (2003)). Criminal negligence for involuntary manslaughter is statutorily defined as "the reckless disregard of the safety of others." S.C. Code Ann. § 16-3-60 (2007). "Recklessness is a state of mind in which the actor is aware of his or her conduct, yet consciously disregards a risk

which his or her conduct is creating." State v. Pittman, 373 S.C. 527, 571, 647 S.E.2d 144, 167 (2007).

"A trial court should refuse to charge a lesser-included offense only where there is no evidence the defendant committed the lesser rather than the greater offense." Crosby, 355 S.C. at 51, 584 S.E.2d at 112.

A. There was not sufficient evidence to warrant an involuntary manslaughter charge.

Appellant was not entitled to an involuntary manslaughter jury instruction because the facts of his case did not fit within the statutory requirements that warrant such an instruction. Appellant contends that he was entitled to an involuntary manslaughter charge because there was evidence he was lawfully armed in self-defense, and evidence he acted recklessly. The trial court did not abuse its discretion because there was no such evidence presented at trial.

During trial, Appellant testified that he did not take a gun into the club, but his friend Curt did. (2nd Tr. 390). Appellant indicated that he took the gun from Curt in the restroom, and Appellant placed the gun in his back pocket. (2nd Tr. 390).

Appellant testified that as they were leaving the club, people from both sides were indicating they wanted to fight. (2nd Tr. 405). He noted that he turned around to see where his female cousins were to make sure they were following him into the parking lot area. (2nd Tr. 405). Appellant noted they were scared to come down the ramp. (2nd Tr. 405). Appellant then testified that when he turned around, there was mace. (2nd Tr. 405). He noted that the mace was coming up the ramp. (2nd Tr. 405-06). Then Appellant stated, "I tried to rub my eyes and

that's when — I guess it was on my hands and it got worse, and I kind of like, you know, panicked. I couldn't see, and that's when I grabbed my gun out of my back pocket." (2nd Tr. 406, ll 9-12). When asked why he grabbed his gun, Appellant testified that he was scared, he could not see anything, and he did not know what was going on. (Tr. 406). He further indicated that he kept the gun in his hand while he was trying to regain his eyesight. (Tr. 406). Appellant asserted that he continued to make his way down the ramp.

> I was going towards my cousin and them voices, all the yelling and stuff. I was walking towards the voices. And as soon as I — I don't know where exactly I was, but I heard a gunshot, and like it scared me. It caught me off guard, and as soon as I heard that, that's when I tensed up and I shot the gun.

(2nd Tr. 406, l 22 – 407, l 2).

Appellant noted that he had the gun at his side when he was walking down, and he heard the gunshot five seconds after he was maced. (2nd Tr. 407-08).

During cross-examination, Appellant testified that after he was sprayed with mace, he could not see. (2nd Tr. 447).

> I was trying to open my eyes, but I couldn't open my eyes. My eyes was burning, and I grabbed my gun out of my back pocket. As you can see on the video, I'm walking with my head down like this, and when I hear a gunshot you see me just flinch real fast which you can see that on the video. I was not facing him when the gun had shot him in the head. I wasn't facing him.

(2nd Tr. 447, ll 14-20). He further testified that he walked past the victim, then flinched and turned around. (2nd Tr. 448). He claimed that he flinched trying to block. (2nd Tr. 449). Appellant admitted that he did not shoot in self-defense. "I didn't intend — I didn't intend to shoot nobody. I didn't try to shoot nobody. I was

— I couldn't see. I'd just got maced, and I heard a gunshot and I flinched. I didn't — it wasn't no self-defense. I wasn't trying to save myself or nobody." (2nd Tr. 449, ll 19-23).

There is no evidence Appellant was lawfully armed in self-defense. By Appellant's own account, he armed himself on the ramp not because of some threat made by an individual, but instead because he could not see because he had pepper spray in his eyes.

"A person can be acting lawfully, even if he is in unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting." State v. Brayboy, 387 S.C. 174, 180, 691 S.E.2d 482, 485 (Ct. App. 2010) (quoting State v. Crosby, 355 S.C. 47, 52, 584 S.E.2d 110, 112 (2003). "The negligent handling of a loaded gun will support a charge of involuntary manslaughter." Brayboy, 387 S.C. at 180, 691 S.E.2d at 485, quoting State v. Mekler, 379 S.C. 12, 15, 664 S.E.2d 477, 478 (2008).

Appellant's reliance upon State v. Burriss, 334 S.C. 256, 513 S.E.2d 104 (1999), is misplaced because Burriss is inapplicable in this case. In Burriss, the South Carolina Supreme Court held that a person could be acting lawfully, even if he is in unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting. 334 S.C. at 265, 513 S.E.2d at 109. In Burriss, the defendant was threatened and then attacked by the victim and another male. Id. at 258, 513 S.E.2d at 106. After being pushed to the ground, the defendant drew a gun and fired two shots at the ground. Id. at 258-59, 513 S.E.2d at 106. Both men backed away. Id. at 259, 513 S.E.2d at 106. As the

defendant attempted to get off the ground, one of the attackers moved to attack the defendant again. Id. The defendant picked up his gun, and it went off, killing the victim. Id. The Supreme Court found that the defendant was lawfully armed in self-defense. Id. at 269, 513 S.E.2d at 109. Since there was evidence that the firing of the gun was not intentional, the defendant in Burriss was entitled to an involuntary manslaughter charge. Id.

This case is distinguishable from Burriss in several respects. First, in Appellant's case, there were no threats made against him by either the victim or any other individual.[3] Second, by all accounts, there was no evidence that Appellant was actually attacked by anyone. Appellant's testimony reflected that he armed himself not because he was threatened or under attack. It was because his friend improperly brought the gun into the club. Further, Appellant did not brandish the weapon because he was under attack or was in fear that he was under attack. By Appellant's testimony, he pulled the gun out of his pocket because he could not see. Altogether, there was no evidence that he could lawfully arm himself in self-defense.

Appellant's improperly relies upon the fact that he received a self-defense jury instruction. Respondent would note from the outset that "there is a difference between being 'armed in self-defense' and 'acting in self-defense.'" State v. Gibson, 390 S.C. 347, 357, 701 S.E.2d 766, 771 (Ct. App. 2010) (citing

[3] Appellant cannot rely upon the alleged robbery plot as support for his claim that he was lawfully armed in self-defense. Appellant did not indicate that he armed himself because he believed he was in the process of being robbed. Further, Appellant never claimed that he fired a shot based upon a fear that he was being robbed. To the contrary, he claimed that he heard a gunshot, and that his body tensed up when he heard that shot. (2nd Tr. 408).

State v. Light, 378 S.C. 641, 649, n. 6, 664 S.E.2d 465, 469, n. 6 (2008); Burriss, 334 S.C. at 265, n. 10, 513 S.E.2d at 109 n. 10 (1999); Crosby, 355 S.C. at 52, 584 S.E.2d at 112 (2003)(stating "[a] person can be acting lawfully, even if he is in unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting"). For the purposes of involuntary manslaughter, the inquiries associated with whether or not to instruct on the defense of self-defense are not applicable. Gibson, 390 S.C. at 357, 701 S.E.2d at 771 (citing Light, 378 S.C. at 648–49, 664 S.E.2d at 468–69). Rather, the court is "concerned only with whether [the defendant] had a right to be armed for purposes of determining whether he was engaged in a lawful act, i.e. was [he] lawfully armed, and not whether he actually acted in self-defense when the shooting occurred." Id. at 649 n. 6, 664 S.E.2d at 469 n. 6.

The trial court's grant of the self-defense jury instruction as it related to the murder charge was improper.

> In order to establish self-defense in South Carolina, the following four elements must be present: (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) if his defense is based upon his belief of imminent danger, a reasonably prudent person of ordinary firmness and courage would have entertained the same belief that he was actually in imminent danger and the circumstances were such as would warrant a person of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or loss of his own life; and (4) the defendant had no other probable means of avoiding the danger.

State v. Wigington, 375 S.C. 25, 31, 649 S.E.2d 185, 188 (S.C. Ct. App. 2007) (citing State v. Bryant, 336 S.C. 340, 344, 520 S.E.2d 319, 321 (1999)). Here,

there was no evidence presented that Appellant was in actual imminent danger of losing his life or sustaining serious bodily injury. Again, there was no testimony or evidence presented that indicated he was threatened by the victim or anyone else just prior to the shooting. By most accounts and the video, the victim was not involved in a confrontation with Appellant. The victim had his back to Appellant. Further, there was no testimony or evidence that would support a finding that a reasonable person would have thought it was necessary to shoot the victim in the back of the head to save himself from serious bodily harm or loss of life. There was no evidence that the victim had a weapon on the morning of the shooting, and there was no evidence that the victim was threatening Appellant when he was shot. Finally, there was no evidence to support a finding the defendant had no other probable means of avoiding the danger. Even Appellant admitted that he was not shooting his gun in self-defense. (2nd Tr. 449). Since the self-defense charge was improper, Appellant cannot rely upon the fact a self-defense charge was given as support for his contention involuntary manslaughter should have been charged.

Altogether, there was not sufficient evidence to warrant an involuntary manslaughter charge. The trial court did not err in denying Appellant's request for the instruction.

B. Any error by the trial court in not granting Appellant's request for an involuntary manslaughter jury instruction was harmless.

If this Court finds the trial court erred in not instructing the jury on involuntary manslaughter, Appellant is still not entitled to relief. Any error by the

trial court in not granting the request for an involuntary manslaughter jury instruction was harmless.

> When considering whether an error with respect to a jury instruction was harmless, we must "determine beyond a reasonable doubt that the error complained of did not contribute to the verdict." State v. Kerr, 330 S.C. 132, 144–45, 498 S.E.2d 212, 218 (Ct.App.1998) (citation omitted). "In making a harmless error analysis, our inquiry is not what the verdict would have been had the jury been given the correct charge, but whether the erroneous charge contributed to the verdict rendered." Id. Thus, whether or not the error was harmless is a fact-intensive inquiry. State v. Jefferies, 316 S.C. 13, 22, 446 S.E.2d 427, 432 (1994) ("We must review the facts the jury heard and weigh those facts against the erroneous jury charge to determine what effect, if any, it had on the verdict.") (citation omitted).

State v. Middleton, 407 S.C. 312, 317, 755 S.E.2d 432, 435 (Ct.App.2014).

Any error in not granting the charge was harmless. There was overwhelming evidence of Appellant's guilt of murder. "'Murder' is the killing of any person with malice aforethought, either express or implied." S.C. Code Ann. § 16-3-10.

There was overwhelming evidence that Appellant was guilty of the murder of GaWayne Franklin. First, there was overwhelming evidence that Appellant killed Franklin. Several eyewitnesses to the shooting testified that the victim was arguing with Appellant's cousin when the shooting happened. (Tr. 242-43; 2nd Tr. 78-9; see 2nd Tr. 126-27, 258-59). Those witnesses indicated Appellant walked up behind the victim and shot the victim in the back of the head. (Tr. 271; 2nd Tr. 42-3, 55-6, 79, 258-59). Their testimony was corroborated by video of the shooting. (State's Exhibits 71, 157; 2nd Tr. 268-69). Appellant admitted that he shot the victim. (2nd Tr. 449). There was also overwhelming evidence that the

shooting of Franklin was done with malice. As noted by the solicitor during closing argument, the video reflects Appellant did start arguing with Franklin while his group was being escorted out of the club. (See State's Exhibits 71 at 20:39-49 (time stamp 3:34:50-3:35:00; State's Exhibit 157, Cam 4, at 3:34:50-3:35:00). Further, Appellant shot the victim using a pistol. (See State's Exhibit 71 at 21:53 (time stamp 3:36:00; State's Exhibit 157, Cam 8, at 3:36:00)). Malice can be inferred from the use of a deadly weapon. (See State v. Belcher, 385 S.C. 597, 612, n. 9, 685 S.E.2d 802, 810 n. 9 (2009)). While he claimed the shooting was not intentional, that assertion was belied by the video, which reflected that he ran behind the victim and shot him in the back of the head. Finally, Appellant immediately fled from the scene after the shooting. (Tr. 80; State's Exhibit 71, at 21:55 (time stamp 3:36:02); State's Exhibit 157, Cam 8, 3:36:02)). Flight from prosecution is admissible as guilt. State v. Thompson, 278 S.C. 1, 292 S.E.2d 581 (1982), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991) (evidence of flight admissible to show guilty knowledge, intent, and that defendant sought to avoid apprehension). Altogether, there was overwhelming evidence Appellant was guilty of the murder of GaWayne Franklin. Since the result at trial would not have been different had the trial court granted the involuntary manslaughter jury instruction, Appellant was not prejudiced by the denial of his request for an involuntary manslaughter instruction. Any error by the trial court was harmless. Appellant is not entitled to relief upon this claim.

II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ALLOWING A SINGLE MENTION OF GANG SIGNS INTO EVIDENCE. THIS ISSUE IS NOT PRESERVED FOR APPELLATE REVIEW AND ANY ERROR IN ADMITTING THE TESTIMONY WAS HARMLESS.

In his second claim on appeal, Appellant asserts the trial court improperly allowed David Richardson to testify that he observed gang signs while inside the club. The trial court did not abuse its discretion in allowing the single mention during Appellant's trial. First, this issue was not preserved by a specific objection. Second, the statement was admissible. Third, any error in the admission of the one mention of gang signs was harmless as its impact was minimal and Appellant's guilt was established by overwhelming evidence.

What Occurred at Trial

Before trial, Appellant discussed a concern he had regarding potential testimony regarding gang affiliation.

> MR. SHAFFER: Your Honor, there is – actually there is one other thing.
>
> THE COURT: Okay.
>
> MR. SHAFFER: I'm relatively certain I have the answer to this.
>
> THE COURT: Okay.
>
> MR. SHAFFER: I don't believe the State's going to bring up any gang notice -
>
> THE COURT: Any what?
>
> MR. SHAFFER: There is some evidence of gang affiliation on both sides of this.
>
> THE COURT: Okay.
>
> MR. SHAFFER: And I think that the State is going to not bring that up and I think that -

MS. CAMPBELL: The only thing in reviewing the statements that I noticed is one of the statements it was mentioned that Mr. Bethel may have given some gang signs. If you want, to make it clean, we'll be able to not to mention that fact.

THE COURT: That probably would be prudent.

(Tr. 90, l 9 – 91, l 3).

During the direct testimony of David Richardson, Franklin's friend who observed Appellant inside the club, the following exchange occurred.

A. When I first saw them, there was a group in the corner of the club.

Q Do you remember how much of them there were?

A Maybe about five.

Q And did you -- did you interact with any of them at any point?

A No, ma'am, I didn't say anything to any one of them.

Q Did you observe their interaction with other people?

A Yes.

Q Tell me what you saw them doing?

A Bouncing around, you know, being belligerent, gang signs, that's about it.

MR. SHAFFER: Objection, Your Honor.

THE COURT: Please approach.

(WHEREUPON, there was a bench conference out of the hearing of the jury and the Court Reporter.)

THE COURT: You may proceed. Overruled.

BY MS. WALKER:

Q So you observed all this?

A Yes, ma'am

Q And are those types of things generally things that will get you kicked out of Mr. Lucky' s?

A Yes, ma'am.

(Tr. 238, l 7 – 239, l 6).

A break was taken after Richardson finished his testimony. (Tr. 264-65). No attempt to place the bench conference on the record was made at that time. After the next witness, court adjourned for the evening. (Tr. 284). Before dismissing for the evening, the trial court asked if the defense had anything to address before breaking for the evening. (Tr. 285). Appellant indicated he had nothing to discuss. (Tr. 285).

A. This issue is not preserved for appellate review.

Appellant asserts that Richardson's testimony that he saw individuals in Appellant's group present gang signs was improperly admitted because it was irrelevant and improper character evidence. These arguments are not preserved for appellate review.

An objection must be on a specific ground. State v. Nichols, 325 S.C. 111, 120, 481 S.E.2d 118, 123 (1997); State v. New, 338 S.C. 313, 318, 526 S.E.2d 237, 239 (Ct.App.1999). A general objection which does not specify the particular ground on which the objection is based is insufficient to preserve a question for review. State v. Patterson, 324 S.C. 5, 17, 482 S.E.2d 760, 766 (1997). In order to preserve for review an alleged error, the objection should be sufficiently specific to bring into focus the precise nature of the alleged error so it

can be reasonably understood by the trial court. New, 338 S.C. at 318, 526 S.E.2d at 239; see also Campbell v. Bi–Lo, Inc., 301 S.C. 448, 454, 392 S.E.2d 477, 481 (Ct.App.1990) (holding where the ground for objection is not stated in the record, there is no basis for appellate review).

Here, Appellant did not provide a specific ground for his objection on the record. Thus, the arguments presented are not preserved for appellate review. "An objection made during an off-the-record conference which is not made part of the record does not preserve the question for review." State v. Hamilton, 344 S.C. 344, 361, 543 S.E.2d 586, 595 (Ct. App. 2001) (citing York v. Conway Ford, Inc., 325 S.C. 170, 480 S.E.2d 726 (1997)(overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005)). See State v. Hutto, 279 S.C. 131, 132, 303 S.E.2d 90, 91 (1983) (finding no error because the appellant did not meet his burden of presenting a record that was sufficiently complete for appellate review of the trial judge's actions); In re Richard D, 388 S.C. 95, 100, 693 S.E.2d 447, 450 (Ct.App.2010) (acknowledging that an issue on appeal may have been discussed during an off-the-record bench conference but holding this court "cannot review issues not contained in the record").

B. Any error in admitting the testimony was harmless.

If the trial court erred in admitting the brief mention of gang signs into evidence, the error was harmless. There was overwhelming evidence of Appellant's guilt presented at trial absent the mention of gang signs.

Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176,

399 S.E.2d 595, 597 (1991). Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained. Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). Thus, an insubstantial error not affecting the result of the trial is harmless where "guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached." State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989).

In Appellant's case, it must first be noted that the mention of gang signs was minimal. The record reflects that the State intentionally elicited the mention of gang signs from Richardson. Further, Richardson did not attribute the presentation of gang signs to Appellant specifically. He merely noted that someone in Appellant's group was making gang signs inside the club. Throughout the remainder of Appellant's four day trial, the State made no mention of any connection between Appellant and a gang or with gang signs. The only other references to gang signs were those that resulted from Appellant's cross-examination of Richardson regarding how Richardson could identify gang signs. (Tr. 249).

Contrary to Appellant's assertions, the State did not attempt to portray Appellant as a member of a gang. As Appellant points out, the State did thoroughly question Appellant regarding how he managed to obtain the $1500 that was found in his pants pockets. (2nd Tr. 414, 417-18, 423-24). However, in closing argument, the State did not attempt to portray Appellant's possession of the money as a sign of involvement in criminal activity. Instead, the State used Appellant's changing explanations regarding his finances as evidence that

Appellant was not credible and was continually changing his story to best fit his defense.[4] (See 2nd Tr. 579-80).

Second, there was overwhelming evidence of Appellant's guilt. "'Murder' is the killing of any person with malice aforethought, either express or implied." S.C. Code Ann. § 16-3-10. "A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder." S.C. Code Ann. § 16-3-29.

There was overwhelming evidence that Appellant was guilty of both the murder of GaWayne Franklin and the attempted murder of Kedron Hope. First, there was overwhelming evidence that Appellant killed Franklin. Several eyewitnesses to the shooting testified that the victim was arguing with Appellant's cousin when the shooting happened. (Tr. 242-43; 2nd Tr. 78-9; see 2nd Tr. 126-27, 258-59). Those witnesses indicated Appellant walked up behind the victim and shot the victim in the back of the head. (Tr. 271; 2nd Tr. 42-3, 55-6, 79, 258-59). Their testimony was corroborated by video of the shooting. (State's Exhibits 71, 157; 2nd Tr. 268-69). Appellant admitted that he shot the victim. (2nd Tr. 449). There was also overwhelming evidence that the shooting of Franklin was done with malice. As noted by the solicitor during closing argument, the video reflects Appellant did start arguing with Franklin while his group was being escorted out of the club. (See State's Exhibits 71 at 20:39-49 (time stamp

[4] Respondent would also note that the solicitor never intimated that Appellant was a cocaine user. The solicitor merely noted that Appellant's nose could have had multiple different reasons for wiping his nose at the club, but the explanation he gave in court was not consistent with the photographs taken of him the next day. (2nd Tr. 570, ll 10-8).

3:34:50-3:35:00; State's Exhibit 157, Cam 4, at 3:34:50-3:35:00). Further, Appellant shot the victim using a pistol. (See State's Exhibit 71 at 21:53 (time stamp 3:36:00; State's Exhibit 157, Cam 8, at 3:36:00)). Malice can be inferred from the use of a deadly weapon. (See State v. Belcher, 385 S.C. 597, 612, n. 9, 685 S.E.2d 802, 810 n. 9 (2009)). While he claimed the shooting was not intentional, that assertion was belied by the evidence presented at trial. (See Argument I, B). Finally, Appellant immediately fled from the scene after the shooting. (Tr. 80; State's Exhibit 71, at 21:55 (time stamp 3:36:02); State's Exhibit 157, Cam 8, 3:36:02)). Flight from prosecution is admissible as guilt. State v. Thompson, 278 S.C. 1, 292 S.E.2d 581 (1982), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991) (evidence of flight admissible to show guilty knowledge, intent, and that defendant sought to avoid apprehension). Altogether, there was overwhelming evidence Appellant was guilty of the murder of GaWayne Franklin.

Similarly, there was overwhelming evidence Appellant was guilty of the attempted murder of Kedron Hope. Hope testified Appellant fired at him at least twice initially. (2nd Tr. 111). He noted that Appellant fired at him again at least two more times before going around a building. (2nd Tr. 114). Respondent submits the video of the incident corroborate Hope's testimony regarding the shooting. (See State's Exhibit 71, 157).

Altogether, any error by the trial court in allowing a mention of gang signs at Appellant's trial was harmless. This claim for relief should therefore be denied and dismissed. Appellant's convictions should be affirmed.

CONCLUSION

For the foregoing reasons, the Respondent respectfully requests this Court deny Appellant's appeal and affirm his convictions for the murder of GaWayne Franklin and the attempted murder of Kedron Hope.

Respectfully submitted,

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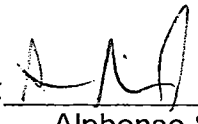
By: 
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August 18, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
The Honorable Deadra L. Jefferson, Circuit Court Judge

General Sessions Case No. 2012-GS-40-04975; 05302
Appellate Case No. 2013-002478

THE STATE,

Respondent,

vs.

JAMES KEVIN BETHEL,

Appellant.

CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., counsel for the Respondent, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two (2) copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, David Alexander, Esq., SCCID/Division of Appellate Defense, 1330 Lady St., Ste. #401, Columbia, South Carolina 29201.

I further certify that all parties required by Rule to be served have been served.

This 18th day of August, 2015.

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SECOND CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., counsel for the Respondent, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by hand delivery of two (2) copies of the same to his attorney of record, David Alexander, Esq., SCCID/Division of Appellate Defense, 1330 Lady St., Ste. #401, Columbia, South Carolina 29201.

I further certify that all parties required by Rule to be served have been served.

This 10th day of September, 2015.

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