

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Horry County

Steven H. John, Circuit Court Judge

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S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

KAREEM HARRY,

PETITIONER

APPENDIX

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

The State, Respondent,

v.

Kareem Harry, Appellant.

Appellate Case No. 2013-000336

Appeal From Horry County
Steven H. John, Circuit Court Judge

Opinion No. 5332
Heard May 5, 2015 – Filed July 22, 2015

AFFIRMED

Meliah Bowers Jefferson, of Wyche Law Firm, of Greenville, and Chief Appellate Defender Robert Michael Dudek, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy Attorney General John W. McIntosh, Senior Assistant Deputy Attorney General Donald J. Zelenka, and Assistant Attorney General J. Anthony Mabry, all of Columbia, and Solicitor Jimmy A. Richardson, II, of Conway, for Respondent.

KONDUROS, J.: Kareem Harry appeals his murder conviction under the hand of one is the hand of all theory of accomplice liability. He argues the circuit court erred in denying his motion for directed verdict, as the State failed to present any direct or substantial circumstantial evidence he acted in concert with Saire Castro,

his associate and friend, who admitted shooting the victim and pled guilty to voluntary manslaughter. We affirm.

FACTS/PROCEDURAL BACKGROUND

Harry was dating a woman, Ashley Bledsoe, with whom he had a tumultuous relationship. According to Bledsoe, she and Harry dated for about eight or nine months, and, for the two weeks prior to the shooting in this case, they lived together in the apartment Bledsoe shared with a roommate, Evelyn. Bledsoe testified Harry became abusive to her. On February 26, 2011, Harry and Bledsoe fought, and Bledsoe called the police. When police arrived, Harry fled. The following day, Bledsoe met the victim, Kevin Bowens, through her roommate. Bowens took Bledsoe and Evelyn to dinner, and they all went to a club together. Bowens spent that night at Bledsoe's apartment. A friend of Bledsoe and Harry, Sage McPhail, owned a truck and helped move Harry's things out of her apartment the next day. McPhail took everything except a large plasma television to the home where Harry was staying with the mother of his children. According to Bledsoe, she had given the television to Bowens, and Bowens said he would pay her for it.

Harry contacted Bledsoe indicating he wanted his television or the money for it. Bledsoe told Harry she had sold it to a female friend. She texted Bowens asking for the money saying the television had belonged to a female friend who was demanding the money. Bowens did not return the television or pay Bledsoe. Eventually, Bledsoe told Harry the truth about what happened with the television. According to Bledsoe, Harry needed the television or the money the following day to pay probation fees that were due. While Bledsoe and Harry were talking on the phone, he told her to stop where she was, and he would come get her. Bledsoe, riding with Evelyn at the time, stopped at Waccarnaw Hospital, and Harry picked her up in McPhail's red truck.¹ The two drove to Tommy Byrne's apartment, approximately 16.3 miles away, even though Bowens's house was in the Kings Grant subdivision only 2.9 miles away from the hospital. According to Byrne, Harry came into the apartment and asked to see Castro. Castro and Harry had a five to eight minute conversation in the living room that Byrne could not overhear because he was in the kitchen with his father, who was preparing dinner. Harry then left, and Castro followed, asking Byrne if he wanted to go for a ride. Byrne

¹ According to McPhail, he did minor automotive repair work for friends and he had Harry's sport utility vehicle (SUV) to repair its brakes. McPhail testified he left his truck for Harry to drive while he worked on the SUV.

testified that as they were leaving, Castro went back to the kitchen, where he kept his gun on top of a cabinet. Although neither Harry nor Byrne saw Castro retrieve the gun, Byrne testified it was well-known Castro had a firearm.²

Castro and Byrne, driving separately, followed Bledsoe and Harry to Bowens's neighborhood. Once there, Harry, Castro, and Byrne got out of their vehicles, and Bowens entered the yard area near his garage. According to Bowens's girlfriend, with whom he shared the home, the vehicles sped down the street in front of their house and pulled into the middle of the yard. Harry asked several times about getting the television back, but Bowens indicated he was not going to return the television. According to Bowens's girlfriend and neighbors, although it was unclear exactly what the parties were saying, the conversation was loud. Harry told Bledsoe to get out of the truck, and she stated Bowens had "stolen" the television. Harry instructed Bledsoe to get back in the truck, and Castro shot Bowens three times. Castro testified he saw Bowens reach for a gun he had in his waistband, the outline of which was visible through his shirt, and he shot in self-defense. Byrne indicated Bowens did not reach for his gun, and Bowens's girlfriend and a neighbor testified the gun was still in Bowens's waistband after he was shot.

Harry jumped into the truck with Bledsoe and instructed her to drive away. After a brief chase, Bledsoe stopped the vehicle and surrendered. Harry fled and police later captured him.

Castro pled guilty to voluntary manslaughter, and Harry was tried for murder under the hand of one is the hand of all theory of accomplice liability. At trial, Harry moved for directed verdict, arguing the State failed to present any direct or substantial circumstantial evidence Harry conspired or planned with Castro to murder Bowens over the television or to accomplish any illegal purpose. The circuit court denied Harry's motion, and the jury convicted him. The circuit court sentenced him to thirty-one years' imprisonment. This appeal followed.

STANDARD OF REVIEW

² Castro had been arrested for having drugs and guns in a vehicle a few weeks earlier. Because his child was also in the vehicle, the Department of Social Services required Castro and the child's mother to reside separately from the child, and they were staying with Byrne.

"In cases where the State has failed to present evidence of the offense charged, a criminal defendant is entitled to a directed verdict." *State v. Hepburn*, 406 S.C. 416, 429, 753 S.E.2d 402, 408 (2013). "During trial, [w]hen ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." *Id.* at 429, 753 S.E. 2d at 408-09 (alteration by court) (internal quotation marks omitted). "The trial court should grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty, as [s]uspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." *Id.* at 429, 753 S.E.2d at 409 (alteration by court) (internal quotation marks omitted). "On the other hand, a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis." *Id.* (internal quotation marks omitted).

"On appeal, [w]hen reviewing a denial of a directed verdict, this [c]ourt must view the evidence and all reasonable inferences in the light most favorable to the [S]tate." *Id.* (first alteration by court) (internal quotation marks omitted). "If the [S]tate has presented any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, this [c]ourt must affirm the trial court's decision to submit the case to the jury." *Id.* (internal quotation marks omitted). "Circumstantial evidence . . . gains its strength from its combination with other evidence, and all the circumstantial evidence presented in a case must be considered together to determine whether it is sufficient to submit to the jury." *State v. Rogers*, 405 S.C. 554, 567, 748 S.E.2d 265, 272 (Ct. App. 2013).

LAW/ANALYSIS

Harry maintains the circuit court erred in failing to direct a verdict of acquittal when the State did not present direct or substantial circumstantial evidence proving him guilty of murder under the hand of one is the hand of all theory of accomplice liability. We disagree.

"The doctrine of accomplice liability arises from the theory that the hand of one is the hand of all." *State v. Reid*, 408 S.C. 461, 472, 758 S.E.2d 904, 910 (2014) (internal quotation marks omitted). "Under this theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." *Id.* "Where two persons combine to commit an unlawful act and in its execution a homicide is committed as a probable or natural consequence thereof, all present and participating in the unlawful act are as guilty as the one who committed the fatal act." *State v. Fields*, 314 S.C. 144, 146 n.1, 442 S.E.2d 181, 182 n.1 (1994).

Except in rare situations, a person committing an unlawful act is legally responsible for all natural or necessary consequences thereof. One combining and confederating with others to accomplish an illegal purpose is criminally liable for everything done by either him or his confederates which follows incidentally in the execution of a common design as one of the probable and natural consequences, *though not intended as a part of the original design or common plan.*

State v. McCall, 304 S.C. 465, 469-70, 405 S.E.2d 414, 416 (Ct. App. 1991), *overruled on other grounds by Brightman v. State*, 336 S.C. 348, 520 S.E.2d 614 (1999).

The common purpose may not have been to kill and murder, but if it was unlawful, as, for instance, to break in, and steal, and in the execution of this common purpose a homicide is committed by one, as a probable or natural consequence of the acts done in pursuance of the common design, then all present participating in the unlawful common design are as guilty as the slayer.

State v. Cannon, 49 S.C. 550, 555, 27 S.E. 526, 530 (1897).

The hand of one is the hand of all theory of guilt is more often termed the natural consequences doctrine in other jurisdictions. *See State v. Delestre*, 35 A.3d 886, 896 n.11 (R.I. 2012) (referencing the acceptance of this theory of aiding and abetting by the Second Circuit, Ninth Circuit, Eleventh Circuit, District of Columbia, and South Carolina). "In order to establish the parties agreed to achieve an illegal purpose, thereby establishing presence by pre-arrangement, the State need not prove a formal expressed agreement, but rather can prove the same by circumstantial evidence and the conduct of the parties." *State v. Gibson*, 390 S.C. 347, 354, 701 S.E.2d 766, 770 (Ct. App. 2010).

While not controlling, we find the facts in *People v. Miller*, 2008 WL 1899560 (Cal. Ct. App. 2008), to be analogous to the facts of this case and its disposition, therefore, informative. In that case, Miller asked another man, Baillie, to accompany him to confront a third man (Victim) regarding Victim's refusal to provide Miller's sister with a bid for installing an air conditioner. *Id.* at *1. The prosecution argued Miller anticipated getting into a fight with Victim and wanted

Baillie to go with him to back him up. *Id.* Miller knew Baillie normally carried a gun; Baillie was willing to use his gun; Baillie held resentment toward Victim; and Baillie would fight, if Miller needed help. *Id.* Miller was convicted of murder, and the appellate court affirmed that conviction founded upon the natural consequences doctrine. *Id.* at *3.

This court has similarly held circumstantial evidence establishing a defendant called for "backup" from someone with a gun in anticipation of an altercation could withstand a directed verdict motion. In *Gibson*, a disagreement between parties at a bar ended in one man's shooting death. 390 S.C. at 351-53, 701 S.E.2d at 768-69. In determining under the hand of one hand of all theory, the defendant, Adams Gibson, was not entitled to a directed verdict, this court found Adams called his brother, Jacques, to the bar and, instead of leaving with him, called Jacques inside the bar to point out the men with whom he had been arguing. *Id.* at 355, 701 S.E.2d at 770. Furthermore, [a witness] testified Adams went to Jacques's car and retrieved a gun moments before the shooting and although they left separately, both men fled the scene. *Id.* The court concluded this evidence was sufficient to withstand Adams's directed verdict motion.

Here, at minimum, the evidence creates the inferences that Adams informed Jacques of the situation, that the reason for the call may not have been solely for the purpose of removing Adams from the scene, and that Adams was aware a firearm was available for him to retrieve from Jacques's white sedan. When viewed in the light most favorable to the State, the circumstantial evidence in this case infers Adams and Jacques may have acted in concert in assaulting the men from Winnsboro.

Id.

In the present case, the circuit court did not err in sending Harry's case to the jury. The State presented substantial circumstantial evidence from which the jury could infer Harry planned with Castro to confront Bowens regarding the television and his recent encounter with Bledsoe and assault him or otherwise take the television by force. The record demonstrates Bledsoe and Harry went out of their way to pick up Castro, and after a lengthy private discussion, Castro, an individual known to carry a gun, followed Bledsoe and Harry to Bowens's home. The group did not arrive at his residence by happenstance but by coordinated effort led by Harry.

Once they conspired to confront a known drug dealer,³ who approached them with a gun in his waistband, the natural consequences that flowed from that planned altercation are the responsibilities of both men. Additionally, Harry, Bledsoe, Castro, and Byrne all fled the scene together, with Harry and Bledsoe absconding in a borrowed vehicle. Viewing all inferences in the light most favorable to the State, we find the circuit court did not err in denying Harry's motion for directed verdict. Whether the evidence presented rose to the quantum of proof required for conviction was a question for the jury. Therefore, the ruling of the circuit court is

AFFIRMED.

THOMAS and GEATHERS, JJ., concur.

³ Bowens's girlfriend testified Bowens sold drugs. McPhail testified he purchased marijuana and cocaine from Harry on different occasions. Harry testified he spoke to Bowens on the phone prior to going to his house and determined they "had people in common" and the area where they live is a small place where people know each other.

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

APPEAL FROM HORRY COUNTY
Court of General Sessions

Steven H. John, Circuit Court Judge

C.A. No. 2012-GS-26-2938

Appellate Case No.: 2013-000336

The State of South Carolina.Respondent,

v.

Kareem S. HarryAppellant.

**APPELLANT KAREEM S. HARRY'S
PETITION FOR REHEARING**

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Pursuant to Rule 221(a), SCACR, Appellant Kareem S. Harry (“Appellant”) petitions the Court for rehearing of its Opinion No. 5332 filed July 22, 2015 (the “Opinion”), on the grounds that the Court “overlooked or misapprehended” the points set forth below. Because of the importance of the issues involved, Appellant requests rehearing by the full Court sitting *en banc*.

I. The Court Erred When It Found That The State Presented Substantial Circumstantial Evidence From Which The Jury Could Infer Harry Planned To Confront And Assault Bowens Or Otherwise Take The Television By Force.

The Court’s opinion overlooks the State’s failure to present any direct or substantial circumstantial evidence of any initial illegal purpose, much less a planned assault, as a basis for which Harry could have been criminally liable for everything done by Castro incidental to that initial illegal purpose. The Court affirmed the lower court’s denial of the directed verdict motions based on the suspicion that Harry intended to confront, assault, or otherwise take the television from Bowens by force without any proof to support this suspicion. This Court’s prior jurisprudence articulates that “[t]he lower court should not refuse to grant the motion [for directed verdict] where the evidence **merely raises a suspicion that the accused is guilty.**” *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000). Instead, **“[t]he trial court should grant the directed verdict motion . . . , as suspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof.”** *State v. Hepburn*, 406 S.C. 416, 429, 753 S.E.2d 402, 408–09 (2013) (citations and internal quotation marks omitted).

There is no evidence in the record that Harry had an acrimonious encounter or conversation with Bowens regarding the television. The record actually establishes the very opposite. The only evidence in the record regarding the interaction between Harry and Bowens about the television prior to the meeting at Bowens' home concerns one telephone conversation. Ashley Bledsoe testified that Harry talked to Bowens by cell phone about getting the television back prior to arriving at the home. (R. p. 58, lines 14-18.) Christina Patterson, Bowens' girlfriend, testified that Bowens told her that Bledsoe "had some guy that was calling him about the TV and the guy didn't even know the situation." (R. p. 316, lines 13-14.) Harry testified that he had a conversation with Bowens about arranging to meet about the television, during which Harry learned that he and Bowens had some common friends (R. p. 446, line 9- R. p. 447, line 10.) There is nothing in the record to even suggest that Harry and Bowens were confrontational with each other about the television.

There is no evidence in the record that Harry knew anything about Bowens' "encounter" with Bledsoe prior to arriving at Bowens' home. As discussed above, the evidence in the record only demonstrated that Harry knew Bledsoe had given the television to Bowens, which Harry had arranged to pickup from Bowens without any indication of conflict or provocation for disagreement. The Court's suggestion that Harry may have been upset, jealous, or otherwise emotionally charged by Bowens and Bledsoe's "encounter" is merely supposition. Bledsoe testified she first told Harry that she sold the television to a girl, (R. p. 66, line 13-p. 67, line 3.), and later admitted to him that Bowens had possession of the television and where Bowens lived. There is no evidence in the record that Harry knew that Bledsoe and Bowens had an "encounter"

before he went to pick up the television from Bowens. The record is equally absent of any evidence to support the assumption that Harry would be upset had he known about the “encounter.” Bledsoe, herself, testified that she previously had an “encounter” with Tommy Byrne. (R. p. 75, lines 3-13.) Harry obviously was unconcerned that Bledsoe had an “encounter” with Byrne, and there is nothing in the record to support a finding that Harry would have held contempt for Bowens had Harry been aware that Bowens spent the night with Bledsoe.

For a person who has not actually committed the homicidal act to be regarded as a participant in a homicide, he or she must have aided, abetted, assisted, encouraged, or advised the killing. Also, the courts have required that the alleged accomplice must have acted with the intention of encouraging and abetting the commission of the homicide, or, at least that the commission of the murder by the principal must have been a reasonably foreseeable consequence of the defendant’s actions.

State v. Mattison, 388 S.C. 469, 484, 697 S.E.2d 578, 586 (2010) (quoting 40 Am. Jur. 2d Homicide § 26 (2010)) (emphasis in original). As set forth in the appellate briefs to the Court, the record simply does not support an adversarial relationship between Harry and Bowens, but rather the whole case is base on a fabrication invented to suit the narrative of the State’s theory of motive. Because the case presented by the State was too insubstantial to rise above a mere suspicion that Harry was guilty of murder under the “hand of one is the hand of all” theory of accomplice liability, the Court should withdraw and reconsider its opinion.

II. *The Court Erred When It Departed From South Carolina Precedent And Relied On California Jurisprudence To Affirm The Lower Court Decision.*

In affirming Harry’s conviction, the Court ignored established South Carolina law. It is well established that where the State relies solely on circumstantial evidence, the trial

court should submit the case to the jury only if there is substantial circumstantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced. *State v. Bostic*, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011) (citing *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)).

“The jury weighs the evidence **but when there is an absence of evidence, it becomes the duty of the trial judge to direct a verdict. Evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt.**” *Id.* (citing *State v. Schrock*, 283 S.C. 129, 133-34, 322 S.E.2d 450, 452-53 (1984)). **It is wholly insufficient to take the case to the jury when the evidence raises no more than a “mere suspicion” of guilt.** *State v. Lewis*, 403 S.C. 345, 353, 743 S.E.2d 124, 128 (Ct. App. 2013). **“Suspicion” implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof.** *State v. Buckmon*, 347 S.C. 316, 322, 555 S.E.2d 402, 404-05 (2001) (citing *State v. Lollis*, 343 S.C. 580, 541 S.E.2d 254 (2001)). If the State does not demonstrate substantial circumstantial evidence that the defendant committed the particular crime, the defendant is entitled to a directed verdict. *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011).

The California case *People v. Miller*, 2008 WL 1899560 (Cal. Ct. App. 2008), cited by the Court, is distinguishable from the instant case on appeal. In *Miller*, the prosecution presented evidence that the defendant intended to confront the victim prior to arriving at the victim’s home. Most notably, the evidence demonstrated that: 1) the defendant was angry with the victim; 2) the defendant called the victim multiple times during which they argued, yelled, and became angry with each other; 3) the defendant admitted he went to the victim’s home for to purpose of confronting him; 4) the

defendant admitted that he was aware that the shooter normally carried a gun; 5) the defendant knew that the shooter and the victim did not get along; and 6) as planned, the defendant and the victim were in a physical altercation immediately prior to the shooting. *Id.* Unlike the *Miller* case, the State produced no evidence that Harry ever intended to confront Bowens about the television or otherwise engage in forcible conduct to procure the return of the television. Therefore, *Miller* is factually distinguishable from the case at hand.

Furthermore, California law requires the court inform the jury of the target (or predicate) offense, including the elements required to prove such offense, that a defendant allegedly committed from which a natural and probable consequence resulted in the charged crime. *People v. Prettyman*, 14 Cal. App. 4th 248, 266-67 (Cal. Ct. App. 1996). The very purpose of this requirement is to prevent the jury from engaging in the type of speculation relied upon by the trial court in denying the directed verdict motion and this Court in rendering its opinion, where jury's might convict under the natural and probable consequences doctrine based on a generalized belief that the defendant was engaged in undefined nefarious behavior, rather than based on evidence of an actual underlying target offense. *See People v. Hickles*, 56 Cal.App.4th 1183, 1194-95 (1997) (quoting *People v. Solis*, 20 Cal. App. 4th 264 (Cal. Ct. App. 1993); *see also People v. Prettyman*, 14 Cal.4th 248, 266-67 (1996) (recognizing that the purpose of this rule is to prevent the jury from "indulg[ing] in unguided speculation" as to the nature of the target offense). Consequently, California courts have found reversible error when the prosecution fails to prove the target offense or the trial court does not enumerate the potential target offenses that could be argued from the evidence. *Hickles*, 56 Cal.App.4th

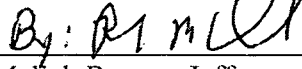
at 1186; 1198. As required by California law, the trial court in *Miller* explained that the target offense in that case was assault and battery. *See Miller*, 2008 WL 1899560 at *6. Here, the State did not submit evidence of any underlying criminal act or plan. Instead, it relied on generalized, unsupported theories of why Harry might have wanted to confront Bowens, leading to only suspicions of guilt not amounting to proof sufficient to send this case to a jury. Had the Court acknowledged the legal requirements of California law in comparing *Miller* to the circumstances of this case, the circumstances presented in this appeal would warrant reversal of Harry's conviction.

While the Court leaves to the province of the jury whether the evidence presented by the State rises to the quantum of proof required for conviction, it remains with the Court to ensure that the State has presented evidence – some facts or circumstances amounting to proof – that the charged crime has been committed. The State failed to present any direct or substantial circumstantial evidence that Harry had any criminal intent or ill-will towards Bowens when Harry went to Bowens' home about the television.

CONCLUSION

For these reasons, Appellant respectfully asserts that this Court overlooked and/or misapprehended the facts and legal authority applicable in this case; and therefore, respectfully asks that the Court rehear this case *en banc*, reconsider its Opinion, and reverse his conviction.

Respectfully submitted,

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August 6, 2015

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM Horry COUNTY
Court of General Sessions

Steven H. John, Circuit Court Judge

C.A. No. 2012-GS-26-2938

The State of South Carolina Respondent,

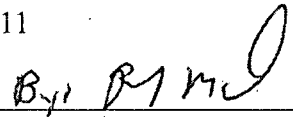
v.

Kareem S. Harry Appellant.

CERTIFICATE OF SERVICE

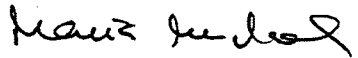
The undersigned counsel for appellant certifies that the foregoing Appellant Kareem S. Harry's Petition for Rehearing has been served upon all other counsel of record as follows:

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Attorneys for Appellant Kareem Harry.

SUBSCRIBED AND SWORN TO before me
this 6th day of August, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.

The South Carolina Court of Appeals

The State, Respondent,

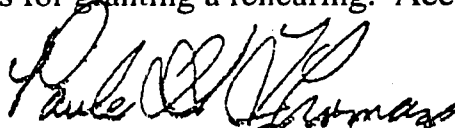
v.

Kareem Harry, Appellant.

Appellate Case No. 2013-000336

ORDER

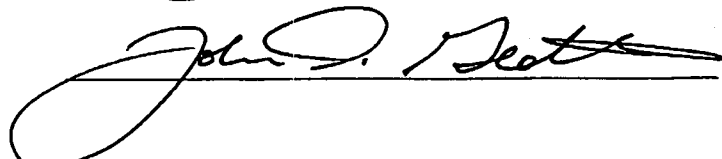
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


Paul D. Thomas

J.



J.


John D. Scott

J.

Columbia, South Carolina

cc:
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FILED

September 17, 2015

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The Honorable Steven H. John