

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM Horry COUNTY
Court of General Sessions

OCT 19 2015

Steven H. John, Circuit Court Judge

SC Court of Appeals

C.A. No. 2012-GS-26-2938
Opinion No.: 5332 (Ct. App. filed July 22, 2015)

The State of South Carolina Respondent,

v.

Kareem S. Harry Petitioner

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

This is to certify that a Petition for Rehearing was made to the Court of Appeals
and ruled on September 17, 2015.

QUESTIONS PRESENTED

1. D
id the Court of Appeals err in finding that the State presented substantial circumstantial evidence from which the jury could infer Petitioner Harry planned to confront and assault the victim or otherwise orchestrated an unlawful plan upon which a hand of one hand of all conviction could be based?

2. D
id the Court of Appeals err in departing from South Carolina precedent and relying on California jurisprudence to affirm the lower court decision where there is no evidence in the record that would support any analogy to California's law in the absence of a required finding of a predicate crime by Petitioner Harry?

STATEMENT OF THE CASE

Procedural History

The Horry County grand jury indicted Petitioner Kareem S. Harry ("Harry") for the offense of murder on July 26, 2012. His case was tried before a jury on February 11-14, 2013, with the Honorable Steven H. John presiding. Ed Chrisco represented Harry. Assistant Solicitors Brad Richardson and Joshua Holford prosecuted the case. The jury found Harry guilty of the offense of murder, under the hand of one hand of all theory of accomplice liability. Judge Stevens sentenced Harry to thirty-one (31) years imprisonment.

Harry's conviction was affirmed by the Court of Appeals in *State v. Harry*, Opinion No. 5332 filed July 22, 2015 (the "Decision"). Harry filed for rehearing, which was denied by the Court of Appeals. Pursuant to Rule 242, SCACR, Petitioner Kareem S. Harry hereby petitions the Court to issue a writ of *certiorari* to review the Decision, on the grounds that the Decision is in conflict with prior decisions of this Court, concerns a fundamental denial of due process, and is contrary to the facts of the record.

Factual Summary

Kevin Bowens ("Bowens") was shot and killed by Saire Castro ("Castro") on March 1, 2011. Castro pled guilty to voluntary manslaughter for the shooting of Bowens and was sentenced to thirty years imprisonment. (R. p. 365, lines 14-20.) Three other people were present at the shooting. Four people were charged in connection with the shooting, but the State chose to prosecute only Harry.

The State's case against Harry was entirely circumstantial and rooted in an absurd theory that Harry masterminded an elaborate plan or scheme to kill Bowens in retribution

for stealing Harry's television. The State presented testimony from the three co-defendants charged in connection with Bowen's killing, who each accepted a plea deal resulting in no incarceration. None of them testified as to any knowledge of a plan concerning stealing, assaulting, or otherwise engaging in any illegal activity, or Harry's involvement in Bowens' death. The State also submitted testimony and evidence gathered by law enforcement during their investigation of the shooting, which support no more than Harry's mere presence during the shooting. Finally, the State submitted testimony from several witnesses who did not witness the actual shooting, unable to provide any evidence to substantiate the State's theory of the case.

Ashley Bledsoe

Ashley Bledsoe ("Bledsoe") was indicted as a co-defendant in this matter and testified in the State's case against Harry under a proffer agreement. Bledsoe had an on-again-off-again relationship with Harry. He occasionally helped her financially, stayed in her apartment from time to time, and stored some of his belongings there including a plasma screen television. (R. p. 46, line 19.); (R. p. 52, lines 10-13.); (R. p. 53, lines 4-23.)

Bledsoe met the victim, Kevin Bowens, on February 27, 2011. He picked her up at a gas station, and spent a night out on the town with Bledsoe and her roommate. (R. p. 50, line 15-p. 89, line 1.) Bowens slept at Bledsoe's apartment that night and, on the following morning, Bledsoe gave Bowens Harry's plasma screen television. (R. p. 52, line 7.); (R. p. 53, lines 9-19.) She testified that she gave Bowens the television with the intention of selling it after getting permission from Harry to do so. (R. 53, lines 17-24.) However, Bledsoe admitted that Harry did not know of her connection to Bowens and

was unaware, at the time of the transaction, that she sold the television to Bowens. (R. p. 54, lines 2-7.) In fact, Bledsoe initially misled everyone in telling Harry that she sold the television to a girl and telling Bowens that the television belonged to one of her girlfriends. (R. p. 66, lines 16-21.) She further perpetrated her deception in text messages to Bowens pleading for the return of the television because “the girl was going to call the cops on me if I didn’t get the TV back.” (R. p. 67, lines 7-8.) She also texted to Bowens that she was “homeless. Please give me the money.” (R. p. 67, line 19.) It was not until Harry sought return of the television or the money that she admitted to Bowens that the television belonged to Harry and that she needed to get it back. *Id.*

By March 1, 2011, Bledsoe and her roommate had moved out of their apartment and she had returned all of Harry’s belongings to him with the exception of the television or any proceeds from the sale of the television. (R. 53, lines 4-11.) At that point, Harry called Bledsoe about the television and they met at Waccamaw Hospital in Murrells Inlet, South Carolina, where Bledsoe first told Harry the truth that Bowens had possession of his television and where Bowens lived. (R. p. 54, line 20-p. 55, line 23.)

At trial, Bledsoe testified that, instead of going directly to retrieve the television from Bowens in Kings Grant, Harry went to his friends Tommy Byrne (“Byrne”) and Saire Castro’s (“Castro”) apartment in Myrtle Beach immediately after picking her up from Waccamaw Hospital. (R. pp. 56-58.) Once they arrived at the apartment in Myrtle Beach, Bledsoe said that Harry went into the apartment alone for approximately five minutes and returned with Byrne and Castro in tow. *Id.* She acknowledged that she was not privy to any conversation between Harry, Byrne, and Castro. *Id.* She further testified that Byrne and Castro traveled in a different vehicle than she and Harry, and that they had

no knowledge of where she was directing Harry to go. *Id.*

Bledsoe noted that Harry talked to Bowens about getting the television back prior to arriving at Bowens' home. (R. p. 58, lines 14-18.) At no time did Bledsoe testify that Harry and Bowens argued about the television or had any contentious conversation. When they arrived at Bowens' home, Harry, Byrne, and Castro got out of the vehicles and, at Bowens' invitation, walked into his yard while Bledsoe remained. (R. p. 58, line 19-p. 59, line 1.) Bledsoe later got out of the vehicle and confronted Bowens about the details of the transaction, at which point Bowens indicated that Bledsoe had been lying about the situation. (R. p. 59, lines 2-10.) Bledsoe also admitted on cross-examination that she had texted Bowens prior to their arrival at his home accusing him of stealing money from her because he did not pay for the television. (R. p. 76, lines 1-9.)

Bledsoe next testified that Castro instructed her to return to the vehicle, and she then heard gunshots as she did so. (R. 59, lines 12-14.) She and Harry ran to their vehicle and left Bowens' home. (R. p. 59, lines 14-17.) They were pulled over by the police shortly thereafter, and Harry ran away from the vehicle. (R. p. 60, lines 23-25.)

Tommy Byrne

Co-defendant Tommy Byrne was also indicted for Bowens' murder and testified in the State's case against Harry under a proffer agreement. He indicated that he and Castro resided in the same apartment. (R. p. 134, lines 14-22.) He further testified that Castro stored a revolver in the kitchen of the apartment above the cabinets. (R. p. 139, lines 8-20.) However, when additionally questioned about Castro's firearm, Byrne could only discuss general "common knowledge" concerning whether Castro was known to carry a weapon, and could not specifically testify that Harry knew Castro carried

weapons or had the weapon on the day of the incident. (R. p. 143, line 19-p. 144, line 13.)

During his testimony, Byrne recalled Harry stopping by the apartment on the day of the shooting and having a conversation with Castro. Byrne admits that he did not hear the substance of the conversation, but estimated that Harry and Castro talked for approximately five to eight minutes. Then, Castro went over to the kitchen to ask Byrne if he wanted to take a ride with them. (R. p. 152, line 2-p. 156, line 14.) Byrne next testified that Harry left the apartment prior to the time Castro retrieved his firearm.

Q. So, Kareem and Saire [Castro] have had some kind of conversation for five to eight minutes?

A. Yes, Sir.

Q. How does that end?

A. As in Saire [Castro] comes up to me and asks me I want to take a ride.

Q. Okay, and you're still at the table at this point?

A. Yes, sir.

Q. And what do you do?

A. Get up and start heading out.

Q. Does Saire [Castro] go out in front of you?

A. No, sir.

Q. Where is he whenever you start to go outside?

A. Walking into the kitchen.

Q. So, he keeps on going into the kitchen ---

A. Yes, sir.

Q. ---where he's got his gun?

A. Yes, sir.

Q. How about Kareem [Harry], is he still in the house at this point?

A. No, sir, he's in front of me going down the steps.

Q. Okay, so you're heading towards the steps already and Kareem [Harry]'s in front of you?

A. Yes, sir.

(R. p. 156, line 9-p. 157, line 10.)

According to Byrne, he learned that they were going to get Harry's television while on the drive to Bowens' home. (R. p. 160, lines 15-24.) When they arrived, the gentlemen exited the vehicles and walk into the yard where Bowens joined them. (R. p. 165, lines 2-25.) Byrne then described the chaos that ensued over the following minutes.

According to Byrne, Harry and Bowens were having a calm conversation until Bledsoe came over and confronted Bowens about the transaction. After a heated exchange between Bledsoe and Bowens, Harry told Bledsoe to return to the vehicle, and then Castro suddenly shot Bowens. (R. p. 168 line 20-p. 172, line 15.) Everyone ran back to the vehicles and left the scene of the shooting. While leaving, Byrnes recalled Castro acting anxiously and saying "What'd I just do." (R. p. 177, lines 6-9.)

Sage McPhail

Sage McPhail ("McPhail") was indicted for accessory after the fact to Bowens' murder and testified in the State's case against Harry under a proffer agreement. (R. p. 2233, line 18-p. 225, line 20.) McPhail indicated that he had a long-standing friendship with Byrne and knew Castro well because he lived with Byrne. However, McPhail described his relationship with Harry as merely acquaintances, occasionally interacting since 2011. (R. p. 215, line 8-p. 223, line 12.) Although McPhail admitted his knowledge of Castro's possession and storage of firearms, he did not provide any testimony or evidence regarding Harry's knowledge of the matter. (R. p. 226, lines 9-24.) McPhail also recalled that he assisted Bledsoe in moving Harry's belongings out of her apartment and that he left his vehicle with Harry for his use on the day of the shooting because McPhail was performing maintenance on Harry's vehicle. (R. p. 227, line 10-p. 229, line 1.)

McPhail was not present at the scene of the incident. On the day of the incident, Harry had asked McPhail to replace the brakes on a vehicle earlier in the day. Instead of paying McPhail cash for the brake work, Harry gave McPhail cocaine in exchange for the work. Harry also bought the replacement brakes and rooters required for the repairs on

the car. (R. p. 231, line 1-p. 232, line 24). Later that night, McPhail was waiting at Harry's residence to return the vehicle. Harry was not there when McPhail arrived, so he fell asleep waiting for Harry to return. McPhail further testified that he was startled when Harry returned because Harry tapped on the window, informed McPhail that the police were in possession of his vehicle, and then Harry's brother dropped McPhail off at Byrne's residence. (R. p. 235, line 3-p. 242, line 1.) McPhail later assisted Castro in fleeing the area. (R. p. 243, line 14-p. 245, line 12.)

Law Enforcement and Other Witnesses

In its case in chief, the State also presented evidence regarding the police investigation of the shooting and other witness testimony. William Muldoon was one of the police officers that stopped the vehicles on the night of the shooting. He testified that Harry fled when he pulled the vehicle over, but he could not recall whether or not Bledsoe explained that Harry fled because he had warrants. (R. p. 29, line 19-p. 30, line 2.) Jill Domogauer, a crime scene investigator with the Horry County Police Department, testified generally regarding the crime scene including the existence of a firearm inside the Bowens' residence. (R. p. 109, lines 6-23.) However, she admitted that the police did no forensic testing on Bowens' weapon. *Id.*

The other witnesses presented by the State consisted of neighbors and Bowens' girlfriend, none of whom witnessed the shooting. Shantel Lehman, a neighbor of Bowens, was taking out the trash and noticed Bowens talking with some people in his yard, but "didn't think anything of it." Then, she heard gunshots. (R. p. 117, lines 1-8.) She specifically clarified that Bowens was merely talking with the people in his yard, not arguing with anyone. (R. p. 125, lines 21-24.)

Brian McGarrahan testified that he was inside his home when he heard gunshots. (R. p. 204, lines 17-19.) He, then, went outside to assist Bowens and was joined by another unidentified person shortly thereafter. (R. p. 208, line 14-p. 209, line 4.) Although he could not recall whether he told the police at the time of the incident, McGarrahan testified that Bowens possessed a firearm that fell out of his waistband on the night of the shooting. (R. p. 209, lines 5-9.)

Christina Patterson and Bowens were in a romantic relationship. (R. p. 288, line 13.) She acknowledged that Bowens brought a television to their home on February 28, 2011, and indicated that he had purchased it from someone for a combination of cash and drugs. (R. p. 306, lines 17-23.) She further testified that, on March 1, 2011, Bowens received text messages from Bledsoe that he described as causing “drama” between him and Harry over the television. (R. p. 316, lines 3-24.) Although she was inside her home when Harry and the others arrived, Patterson recalled the two vehicles pulling into the yard at a fast speed. She then acknowledged that Bowens invited Harry and the others into his yard with the firearm visible in his waistband. (R. p. 320, lines 20-22.); (R. p. 323, line 5-p. 324, line 13.) Patterson did not witness the entire event, but returned to her front yard when she heard gunshots. (R. p. 328, lines 19-25.) She attempted to assist Bowens and, at some point, removed his firearm, money, and drugs from the scene of the incident before the police arrived. (R. p. 332, line 2-p. 334, line 5.) She did not disclose this information to the police until August 2011, five months after the shooting. (R. p. 336, line 22-p. 337, line 24.)

The Defense’s Case

Saire Castro testified for the defense. In contrast to Byrne’s testimony, Castro

testified that it was Harry and Byrne who engaged in a conversation at the apartment, and that he only went with the two of them as a convenience so Byrne would have a ride home later that night. (R. p. 366, line 16-p. 367, line 2.) Castro explained that he did not find out where they were going or that they were going to get a television until they were driving over to Bowens' home. He further admitted that he shot Bowens without any prior discussion with Harry. (R. p. 367, line 3-p. 368, line 12.)

Harry testified in his own defense. He explained that Bledsoe told him that she had sold his television but didn't have the money from the sale. After telling Harry that she sold the television to a girlfriend, Bledsoe changed her story and told Harry that she sold the television to Bowens. Harry met with Bledsoe at Waccamaw Hospital to figure out what was really going on. (R. p. 442, line 25-p. 444, line 23.) While Harry was with Bledsoe, he decided to visit Byrne's house to buy marijuana. (R. p. 445, line 22-p. 446, line 8.) However, before he could get to Byrne's apartment, Harry talked to Bowens and they discussed the television. (R. p. 447, lines 5-10.) Nothing in the record indicates that Harry and Bowens had an animus conversation.

Because Harry was not in a rush to get the television, he proceeded to Byrne's apartment where he got marijuana. Harry planned to hang out with Bledsoe after picking up the television, so he made arrangements for Byrne to help him return McPhail's vehicle later that night. (R. p. 447, line 10-p. 448, line 22.) Harry also testified that he did not specifically invite Castro to come along. (R. p. 447, line 22-p. 449, line 1.)

When they arrived at Bowen's residence, the conversation was initially calm. Then, Bledsoe confronted Bowens about the television and the conversation escalated in intensity, at which point Castro told Bledsoe to get back into the vehicle. Harry turned to

escort Bledsoe back to the vehicle, and then he heard the gunshots and saw Bowens fall to the ground. (R. p. 449, line 20-p. 457, line 1.) Harry further explained that they all left the scene of the incident in their vehicles, and when they were pulled over by the police, he ran because he did not want to face a probation violation. (R. p. 459, line 22-p. 460, line 3.) Harry's uncontroverted testimony was that he did not know Castro had a gun until he shot Bowens. (R. p. 499, line 15-p. 500, line 4.); (R. 506, lines 11-12.)

ARGUMENTS

I. The Court of Appeals erred in finding that the State presented substantial circumstantial evidence from which the jury could infer Petitioner Harry planned to confront and assault the victim or otherwise orchestrated an unlawful plan upon which a hand of one hand of all conviction could be based.

The Court of Appeals held the “[t]he 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.” Harry argued on rehearing that the Court of Appeals departed from established South Carolina precedent and misapplied the law in its reliance on California jurisprudence. The Court of Appeals’s Decision 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 Decision 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 of Appeals' 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 and Byrne continued to have an amicable association thereafter. 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 Decision in this case conflicts with this Court's well-established jurisprudence on the hand of one hand of all theory of accomplice liability as set forth above, *see supra e.g., Hepburn, Mattison, and Mitchell*, certiorari should be granted. *See* Rule 242 (b)(3), SCACR.

II. *The Court of Appeals erred in departing from South Carolina precedent and relying on California jurisprudence to affirm the lower court decision where there is no evidence in the record that would support any analogy to California's law in the absence of a required finding of a predicate crime by Petitioner Harry.*

In affirming Harry's conviction, the Court of Appeals ignored established South Carolina law in favor of California jurisprudence. The Court of Appeals further misapplied the principals of California law. This error warrants this Court's review. It is well established in South Carolina 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 of Appeals, is distinguishable from the instant case. 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

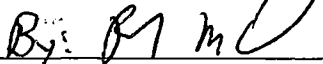
defendant allegedly committed from which a natural and probable consequence resulted in the charged crime. *People v. Prettyman*, 14 Cal. App. 4th 248, 266-67 (Cal. Ct. App. 1996). The very purpose of this requirement is to prevent the jury from engaging in the type of speculation relied upon by the 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 of Appeals acknowledged the legal requirements of California law in comparing *Miller* to the circumstances of this case, the circumstances presented in this petition would warrant reversal of Harry's conviction.

While the Court of Appeals would leave 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 this Court to ensure that the State has presented actual 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. Allowing the Court of Appeals Decision to stand broadens the scope of the law as it relates to the hand of one hand of all theory of accomplice liability and opens the door to prosecutions based on generalized beliefs about a defendant's character rather than any evidence of specific guilt. That is not the law of South Carolina *see supra e.g., Hepburn, Mattison, and Mitchell*, and certiorari should be granted. *See* Rule 242 (b)(3), SCACR.

CONCLUSION

By reason of the foregoing arguments, Petitioner Harry respectfully requests that a writ of certiorari be grant to allow full briefing on these significant issues.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned counsel for Petitioner certifies that a copy of the Petition for Writ of Certiorari and a copy of the Appendix has been served upon J. Anthony Mabry, Esquire at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Kareem S. Harry, #354303, at Perry Correctional Institution this 19th day of October.

Lora M. Caudy for

Robert M. Dudek
October 19, 2015

SWORN TO BEFORE ME this 19th day
Of October, 2015

Mark Decker (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.