

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

Appellate Case No. 2015-002161

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S.C. Supreme Court

THE STATE,

Respondent,

v.

KAREEM HARRY,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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ATTORNEYS FOR RESPONDENT

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PETITIONER'S QUESTIONS PRESENTED

1. Did 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. Did the Court of Appeals err in departing from South Carolina precedent and relying on California jurisprudence to affirm the lower court decision where there si 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?

RESPONDENT'S COUNTER-QUESTION

The Court of Appeals correctly affirmed Petitioner's conviction and sentence because Judge John did not err in denying the motion(s) for a directed verdict of acquittal where there was direct and substantial circumstantial evidence proving Harry guilty of murder under accomplice liability.

STATEMENT OF THE CASE

Petitioner, along with a co-defendant, murdered Kevin Bowens on March 1, 2011 in Horry County. Petitioner was arrested 2 days later on March 3rd and charged with Bowen's murder. On July 26, 2012, petitioner was indicted by the Horry County grand jury for the murder. (Ind. # 2011-GS-26-2938). Petitioner proceeded to a jury trial from February 11 – 14, 2013 before the Honorable Stephen H. John. At the trial's conclusion, the jury found petitioner guilty of murder. Judge John sentenced petitioner to 31 years confinement for Bowen's murder.¹ (R. 15-16, 409-10, 516, 528, 3, Indictment). Petitioner appealed raising 1 issue [directed verdict]. On July 22, 2015, the Court of Appeals affirmed. State v. Harry, 413 S.C. 534, 776 S.E.2d 387 (Ct. App. 2015).² A petition for rehearing was denied. A petition for certiorari followed raising 2 issues.

RESPONDENT'S STATEMENT OF FACTS

In February of 2011, petitioner Kareem Harry ("Harry") was a drug dealer [primarily in cocaine] and an aspiring rap musician and record producer. Harry was also on probation for a prior criminal offense. At that time, Harry had a romantic relationship with and was cohabiting with Ashley Bledsoe ("Ashley") in Ashley's apartment in Myrtle Beach. Harry and Ashley had been involved romantically for about 10 months. Harry also had a relationship with another woman, the mother of his 4 children, who lived in a mobile home ("the mobile home") Harry purchased for her on Hwy. 544 in Horry County. (R. 46-83, 183 219-20, 222-23, 433-509).

At the end of February, 2011, Harry's relationship with Ashley was ending because Harry had become physically abusive to Ashley, and a warrant had been issued for Harry's arrest for criminal domestic violence on February 26, 2011. Police tried to arrest Harry on that night, but

¹ Petitioner's co-defendant Saire Castro pled guilty before petitioner's trial to voluntary manslaughter and received a sentence of 30 years. Petitioner chose to proceed to trial and was convicted of murder and sentenced to 31 years.

² Judge Konduros authored the Opinion of the Court, which was concurred in by Judge Thomas and Judge Geathers.

Harry fled from Ashley's apartment complex. Police had also previously raided the apartment Harry shared with Ashley several days prior and recovered cocaine. As a result, Ashley was charged with trafficking. The apartment complex evicted Ashley, and she was forced to move in a new apartment in a different complex. At this same time, Harry was moving out of Ashley's original apartment and moving all of his personal items into *the mobile home* where the mother of his children lived with the 4 children. Except for 1 item, all of Harry's personal things were moved to *the mobile home* on February 28th with the assistance of Sage McPhail ("McPhail") who owned a small red truck. Harry left a 47 inch flat screen plasma television ("the T.V.") at Ashley's. (R. 46-83, 226-28, 436, 438, 440-41, 470-72, 475-76).

Unknown to Harry, Ashley had met a new man, the victim in this case Kevin Bowens ("the victim"), and engaged in a short romantic relationship with him beginning on the night of February 27, 2011. That night, Ashley and the victim spent some time at a night club and eventually spent the night at Ashley's apartment. According to Ashley, the following morning she allowed the victim to take *the T.V.* with the promise he pay her for it.³ The victim physically carried the flat screen T.V., which was not heavy, to his car without any assistance from anyone else and placed it in his car. When the victim arrived at his residence, he also carried the T.V. into his home without any assistance and placed it in his bedroom. (R. 46-83, 53-54, 304-05, 442-43, 483).

Harry was not aware Ashley had given the T.V. to the victim. At some point after moving out of Ashley's original apartment, Harry began demanding Ashley return his T.V. or pay him for it, because Harry needed money for an upcoming probation hearing. Ashley misled Harry and told him she had given the T.V. to a girlfriend who was going to pay her for it, because Ashley was afraid of what Harry would do to her if he found out about the victim. Eventually, on the afternoon

³ According to Ashley, Harry had previously given Ashley permission to sell the T.V. if she could.

of March 1, 2011, Ashley admitted to Harry she had given the T.V. to another man. (R. 46-83; 53-56; 442-43, 403, 485).

That night, Harry contacted Ashley, who was riding in a car with her friend Evelyn, and Harry demanded Ashley pull over wherever she was and meet him regarding the T.V. Ashley pulled into the parking lot of Waccamaw Hospital *in Murrell's Inlet* and waited. Once Harry arrived, Ashley got into the vehicle Harry was operating, McPhail's red truck, and Harry told Ashley to give him the identity of the man she had given the T.V. to, i.e. the victim, and directions to his residence. Ashley, who had previously been assaulted by Harry, complied. Ashley informed Harry the victim Kevin Bowens had the T.V. and lived in Kings Court subdivision. Harry knew exactly where Kings Court subdivision was located. (R. 53-56).

Harry indicated to Ashley they were going to the victim's residence, also *in Murrell's Inlet*, to get his T.V. back. Instead of traveling directly to the victim's residence, which was just 2.9 miles away, Harry intentionally went out of his way and drove to an apartment, about a 34 minute drive away, where an associate and friend, Saire Castro ("Castro"), resided. Castro was also a drug dealer and had recently been arrested in possession of 2 pistols and drugs, and had moved into a friend's apartment on Burcale Road, *in Myrtle Beach*. In addition to the 2 guns seized by police, Castro was known to carry a .357 magnum revolver. The .357 was kept on top of the kitchen cabinet in the apartment in which Castro now resided. (R. 46-83; 131-57; 186-87; 226; 400).

Ashley testified that on the night of March 1st, Harry did not drive immediately to the victim's residence, which was just a couple of minutes away, but drove *the red truck* to the aforementioned apartment on Burcale Rd. *in Myrtle Beach*. Once there, Harry got out of the truck and went into an apartment and stayed approximately 5 minutes while Ashley remained in the truck. When Harry returned, he had 2 men with him, 1 of whom was Castro. Castro was

carrying the .357 revolver, which was secreted on his person. (R. 53-56; 102-03; 131-71).

The lessee of the apartment Harry entered, Tommy Byrne (“Byrne”), a close friend and associate of Harry, and a drug dealer [primarily marijuana], testified that on the night of March 1st, Harry came into his [Byrne’s] apartment and asked to speak with Castro, who was sitting at the kitchen table.⁴ Harry did not ask to speak with anyone else in the apartment, only Castro. Castro immediately got up and went into the living room with Harry and the 2 men [Harry and Castro] spoke privately for 5 to 8 minutes. Byrne could see the 2 men talking, but could not hear what they were discussing because the men kept their voices low. At the end of their conversation, Castro came to Byrne and asked him if he wanted to “go for a ride.” Byrne agreed to go. Castro then immediately went into the kitchen where the .357 revolver was kept over the kitchen cabinet as Byrne headed out the door of the apartment. Castro retrieved the loaded .357. (R. 131-59).

Byrne followed Harry out of the apartment and to Harry’s vehicle, which belonged to the aforementioned McPhail. When Byrne reached the truck, he saw Ashley in the passenger’s seat. Castro eventually came out of the apartment alone, and he and Byrne got into a separate car, with Castro driving. Harry, driving the *red truck*, led the way out of the apartment complex with Castro and Byrne following in Castro’s car. When Byrne asked Castro what was up, Castro stated they were going to get Harry’s T.V. Neither Byrne nor Castro knew the victim. (R. 131-61).

Except for a brief stop at a gas station, where the 3 men got out for a time together, Harry, driving the red truck, led Castro and Byrne to the victim’s residence in King’s Court subdivision, which was a 30 minute drive away from the apartment where Castro had retrieved his .357 revolver. It was dark as the 2 vehicles drove into Kings Court subdivision. (R. 161-63, 194-201).

The victim’s longtime girlfriend, Christina Patterson (“Christina”), who resided with the

⁴ Byrne allowed Castro to move into his apartment after he was arrested with the guns and drugs.

victim in Kings Court subdivision, testified that shortly before the murder, she and the victim were eating dinner in the dining room of their home when the victim received a text message from Ashley accusing him of stealing the T.V. The victim was exasperated and told (texted) Ashley to stop texting him. The victim communicated to Christina he had purchased the T.V. from Ashley with a combination of cash and marijuana. The victim then shut off his phone. (R. 287-316).

A few minutes later, Christina was changing her baby's diaper in the child's room when she heard 2 vehicles come flying down the street into the culdesac where she and the victim lived, and the vehicles made a loud noise when they struck a speed barrier in the street. She then looked out a front window of her home and saw the 2 vehicles fly *into their yard* and stop *in the grass*. The vehicles had their headlights on. Three (3) men got out of the vehicles together. Christina testified there were 3 men who immediately got out of the 2 vehicles, and 1 of them, the white male [Byrne] stood on the running board or hub of the vehicle. All 3 men were yelling loudly across the front yard toward her home. (R. 316-24). A neighbor, who was outside her home, testified it was cold that night and the 2 cars remained running after the 3 men exited the vehicles. (R. 114-27).

Christina then went to the master bedroom and informed the victim of what she had just seen. As a result of the men pulling up in his yard, the victim got his personal handgun out of his closet, a 9mm semi-automatic, put it in his front waist band, and told Christina he was going outside to see what the men wanted or to try to resolve the situation. (R. 322-23).

Christina then watched out the window of her dining room and saw the 3 men, Harry, Castro, and Byrne, approach the victim and surround him in a semicircle fashion while the victim was leaning back against his own BMW parked in the victim's driveway. The men began conversing with the victim. The neighbor who was outside her home, testified the men were talking loud enough where she could hear them, but not what they were saying. (R. 125, 323-28).

At some point, Harry signaled Ashley to get out of the truck. Ashley complied, walked over to the victim, and accused the victim of stealing the T.V. The victim denied he stole the T.V. Harry told Ashley to get back in the truck. (R. 169-70, 328).

The victim told Harry he had given Ashley money and marijuana for the T.V. The victim stated he was not going to give the T.V. to the 3 men. The men continued to demand the T.V., and the victim stated he was not giving it to them. When the victim finally made it clear the men could not have the T.V., and he was not giving them any money for the T.V., then and only then, did Castro pull out his .357 revolver and shoot the victim 3 times. The victim was shot in the leg and 2 times in the torso. (R. 170-71).

Christina did not actually see the murder, having gone to place her child in bed, but on the way back to the dining room she heard the 3 gunshots. The neighbor who was outside also heard the first gunshot and as the 3 men were starting to walk away toward their vehicles, she saw 1 man put his arm out back toward the victim and fire 2 more shots. Another neighbor, who was awakened [probably by the loud voices], also heard the gunshots and ran outside. When Christina ran out of the garage to check on the victim, she saw him on the ground resting on his forearms looking up at the 3 men, who were still standing there. She fled back into her home afraid the men would shoot her or come after her. She then came back outside and the 3 men were heading back or getting into their 2 vehicles, and she heard them say: "Lets go, Lets go." (R. 328-31).⁵

The 3 men, Harry, Castro, and Byrne, got back into their vehicles and left together in the same 2 vehicles they had come into the subdivision together in.⁶ At Harry's direction, Ashley was

⁵ Christina also thought she heard the men say something like "Oh shit." (R. 328-31). However, the neighbor who was outside when the shooting occurred exclaimed: "Oh, shit," and ran into her house. (R. 119).

⁶ The neighbor who was outside testified that after the first shot, the shooter turned around, extended his arm, and fired 2 more shots into the victim. After the first shot, the other men with the shooter started moving toward their vehicles, but not fast or in a hurry. (R. 118-19).

now driving the red truck, and Harry was in the passenger seat. Castro was again driving his car with Byrne in the passenger seat. One neighbor testified the 2 cars pulled off from the culdesac slowly together, one behind the other. The vehicle containing Harry was the lead vehicle leaving the neighborhood as it had been on the way into the neighborhood. (R. 59-60, 119-20, 164-65).

When Christina and a neighbor got to the victim, he had 3 gunshot wounds; 1 to the leg, 1 to the center of his chest, and 1 to the back.⁷ The victim died at the scene and was formally pronounced dead at the hospital. (R. 202-11, 277-86, 333).⁸

Another neighbor followed on foot the 2 vehicles Harry, Castro, and Byrne were in as they left the subdivision, got a description of the vehicles, and relayed the same to police. As the vehicles were leaving the area, Castro instructed Byrne to throw the murder weapon out of the car, which Byrne did, but not before wiping the gun down to remove any fingerprints. Police almost immediately tried to stop the 2 vehicles with blue lights near Hwy. 17. Harry ordered Ashley not to stop and to continue driving, which she did for a brief period. When she finally decided to stop anyway, Harry fled from the truck while it was still moving and escaped on foot. He later claimed he lost his cell phone while fleeing from police.⁹ Ashley was taken into custody. Castro and Byrne were stopped almost immediately and also taken into custody. (R. 18-32, 59-60, 120-21, 174-77).

Harry fled on foot and eventually made his way back to his residence [the mobile home] on Hwy. 544. Once there, he knocked on the window of a white SUV, registered in the name of the

⁷ Brian McGarrahan, the neighbor who responded to the victim in his front yard, a fireman and a certified E.M.T., testified the victim was laying on his stomach and when he was turned over a firearm fell *out of his waistband* onto the ground. The victim was unresponsive except for 1 agonal breath. Then, there was no pulse and no further respiration. McGarrahan told 911 the victim was pulseless, apneic, and had injuries incompatible with life. (R. 202-11).

⁸ Christina came forward 5 ½ months after the incident and admitted to police and testified at trial a neighbor handed her the gun that fell out of the victim's waist band and money and drugs that were on the victim's person. She put the gun back in the victim's closet, flushed the drugs down a toilet, and put the money in a jewelry box. (R. 333-34).

⁹ Ashley testified that prior to the shooting, as the 2 vehicles were proceeding *to* the victim's home, Harry was on the phone with the victim.

mother of his children, parked in his driveway occupied by McPhail. McPhail claimed he had done some repair work on the SUV for Harry in exchange for cocaine and was returning the SUV when Harry approached and knocked on the window. McPhail and Harry then got into a vehicle operated by Harry's brother, Kason. The 3 men proceeded back to Byrne's apartment, where Harry and Castro had first conversed. After dropping McPhail off at Byrne's apartment, Harry fled with his brother in his brother's car. (R. 18-32, 60, 215-49, 271-77).

While the above was occurring, Castro, Ashley, and Byrne were being questioned by police at a police substation. During a break in interrogation, Castro escaped from the police station. Castro fled on foot, went back and recovered the murder weapon and discarded it in a lake, and shaved his head to change his appearance. Castro eventually fled back to the apartment where he had originally met with Harry and obtained the .357. McPhail was there and assisted Castro in fleeing the area. McPhail was arrested shortly thereafter and charged with accessory after the fact of murder. Castro fled to Florida, was arrested there by U.S. Marshalls on a fugitive warrant, and returned to South Carolina and charged with murder. Byrne and Ashley were also charged with murder. Harry was arrested 2 days later, on March 3, 2011, and charged with the victim's murder. (R. 18-32, 47-48, 59-60, 103-107, 145, 177-79, 379, 343-50; 407-10, 423).

Later, after Byrne agreed to "cooperate" with police, he took them back to the site where the murder weapon was allegedly thrown out of Castro's vehicle. Police searched the area several times but were never able to locate the murder weapon. (R. 178-79).

All of the defendants testified during the trial. Castro, and of course Harry, both testified for the defense. The other defendants [Ashley, Byrne, and McPhail] testified in the State's case under proffer agreements, in which no promises were made to them regarding the resolution of their charges. At the time of this trial, none of these 3 testifying co-defendants had gone to trial or

their charges been disposed of. They were still exposed to the maximum sentence for murder [Byrne & Ashley] or accessory after the fact of murder [McPhail]. Like Harry and Castro, they each gave testimony attempting to exonerate themselves of any criminal responsibility for murder; however, their combined testimony was consistent in several important respects: (1) Harry had recently broke up with Ashley and wanted his T.V. back or the money for the T.V.; (2) Harry was operating a vehicle that was not registered to him, McPhail's vehicle, on the night in question; (3) Harry did not go directly to the victim's residence, which was close by, after learning the victim had the T.V. even though he knew where Kings Court subdivision was located and had Ashley in *the truck* with him; (4) Instead, Harry drove to *Castro's apartment*, which was a considerable distance away, and privately enlisted Castro, who was known to carry a weapon, to come with him; (5) Castro immediately went into the kitchen and obtained his loaded .357 revolver; (6) all of the co-defendants, except McPhail, then went together to the victim's residence, in 2 separate vehicles, with Harry leading the way, where the victim was confronted about the T.V.; (7) when the victim made it clear he was not going to give them the T.V. or money for the T.V., the victim was immediately shot by Castro with the .357 revolver; (8) whereupon all the defendants immediately left the area together with Harry's vehicle leading the way; (9) Castro and Byrne disposed of the murder weapon, and (10) Harry and Castro eventually fled from police; Harry at the car stop, and Castro from the police station. (R. 46-83; 131-93; 215-50; 271-78). Ashley, along with the testimony of the victim's long-time girlfriend Christina, established Harry did not need the assistance of the 2 other men to load or unload the flat screen T.V. as the victim had loaded and unloaded the T.V. without the assistance of anyone. While the co-defendant's testimony *with charges still pending* was consistent in the above respects, it was inconsistent with each other in several important respects, and inconsistent with the testimony of eyewitnesses to the

murder, including the victim's girlfriend, Christina. (R. 46-83; 114-27; 215-50; 271-78; 287-351).

In the defense' case, Castro testified differently from the co-defendants and Harry claiming the shooting was not strictly over the T.V., but the reason they went to the victim's home to confront him was because the victim had stolen *drugs* or *drug money* from Ashley's apartment the night he stayed over. Castro denied the secret meeting between he and Harry in Byrne's apartment took place. Castro also claimed at the time of their confronting the victim, the victim pulled his gun and was going to shoot Harry, when Castro shot the victim in defense of Harry.¹⁰ However, Castro admitted before he shot the victim, Harry gave the victim a "head nod." (R. 365-402).

Harry testified differently than Castro and the co-defendants. Harry claimed he did not go to Castro's apartment to get Castro and enlist his support, but to buy marijuana from Byrne. Harry testified he, Ashley, Castro, and Byrne went by the victim's home on a side-trip, i.e. on their way to return McPhail's truck to him and for Castro to make a drug sale in the area. Harry claimed he was planning to go to Ashley's while Castro and Byrne returned McPhail's truck, and he and Ashley were going to "chill" at her apartment and smoke "weed." Harry testified the exchange with the victim at the victim's home between the men was calm and polite; he, Harry, did not really care about the T.V., and Castro shot the victim without any warning and or his foreknowledge.¹¹ According to Harry, he never saw the victim pull a gun as Castro claimed. Harry claimed he had turned his back to speak to Ashley, when Castro shot the victim. Harry claimed everyone ran back to their vehicles after Castro shot the victim the first time. Harry claimed he did see the victim pointing the gun at him as the victim lay on the ground wounded, and that was why he fled the

¹⁰ None of the other co-defendants, including Harry, testified the victim pulled his weapon before Castro shot the victim. (R. 46-83; 215-50, 434-509). Harry basically conceded in his brief below that Castro's version of the shooting was not credible *and* Castro had no justification for shooting the victim. Harry did not even argue Castro acted appropriately. (BOA, p. 10; 11-19)

¹¹ Harry testified the only person who raised their voice to the victim was Ashley, and she was told to get back in the truck. The victim also remained calm. According to Harry, there was no animosity between the men. (R. 455-56).

scene and directed Ashley to drive. Harry also made numerous admissions only further strengthening the State's case Harry was guilty of murder.¹² (R. 434-509).

ARGUMENT

Judge John did not err in denying the motions for a directed verdict because there was direct and substantial circumstantial evidence of Harry's guilt of murder.

What Occurred Below

At the close of the State's case, Harry moved for a directed verdict. Judge John denied the motion. (R. 352-62). In ruling on the motion, Judge John stated as follows:

I've looked at, just so that the record reflects, I've also gone through now the case of State v. Curry found at 636 S.E.2d 649. Let me look at State v. Langley here.

All right, based on the Defendant's motion basically for a directed verdict based on insufficient evidence of the crime charged, the murder under the theory of the hand of one is the hand of all basic law regarding directed verdict, of course, is that the Defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged, and again, the trial court's concerned with the existence of evidence, not with the weight of the evidence and if there's any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused the case properly goes to the jury. Obviously their standard is much different. The Court's standard and I think we would all be in agreement this is a substantial or circumstantial evidence case and obviously the Defense disagrees whether it's substantial or not but it's a circumstantial evidence case and the standard then is is there substantial circumstantial evidence reasonably tending to prove the guilt of the accused. The trial court grants a directed verdict motion when a – in the trial of a case when the evidence merely raises a suspicion that the Defendant is guilty of the crime charged and where a jury would only be speculating as to the guilt of the accused or where the evidence is sufficient only to raise a mere suspicion of guilt. Suspicion is defined as implying a belief or opinion as to guilt based on facts or circumstances which do not amount to proof.

In this case, and again in the Court's view, it is a circumstantial evidence case and I'm going to highlight some facts. These are not all the facts the Court has reviewed or using in making its decision, but there are, and some of these are the same that the State brought out in its, in its argument, the – it's clear that the Defendant wanted the TV or the funds, that there's evidence that there was some urgency to his need, that being his probation meeting or hearing the next day, that

¹² See discussion of Harry's testimony, *infra*.

he knew and was informed where the TV was located he had a direct path to go to the location of the TV, which was in the testimony approximately 2.9 miles. He decided not to do that. He decided to go to a place where an individual by the name of Saire Castro was located, the testimony indicating a person common knowledge was that he carried a weapon, had him after a conversation with that individual come along and accompany the Defendant to the location and to accomplish this he had to travel distances far out of his way as testified to, many, many miles out of his way to recruit this person, and then to go back to the location. He goes to the location. The testimony indicates that the multiple vehicles arrived at the location and drove into the yard of the location. There's testimony they the did so in a fast manner, that they exited the vehicles in a hurry, they met the person who had the TV and as a result of the discussion the person that Mr. Harry had recruited to come along with him to collect the TV or the money who the testimony indicates was known to carry a weapon, pulled out that weapon and shot and killed the victim in the presence of Mr. Harry. After that Mr. Harry does not stay at the location to answer questions to the police or to explain his position. He flees the scene. When the police attempt to stop him he flees from the police, not once but twice. All this the Court finds is, in addition to all the other testimony and evidence presented in this case, I'm just highlighting those facts, those aren't the only ones in this case, that there is substantial circumstantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt can be fairly and logically deduced, and therefore, the motion for a directed verdict is denied.

(R. 359-62). At the close of his case, after testifying, and after calling Castro as a witness, Harry renewed his directed verdict motion. Judge John again denied the motion. (R. 514-15).

All right, in, in that and, and the Court accepts that your re-argument of the – your directed verdict motion that you made earlier at the end of the State's case with all the arguments you made at that point in time, those being made again now at this stage of the proceedings at the end of the evidence. Again, as I indicated, and I don't see the necessity to go through all the standards again regarding directed verdict standards. I reincorporate those standards as I indicated them previously but the Court finds in this particular matter that it does and I think it's clear that the State is relying here and its basically a circumstantial evidence case, and based upon that and my examination of the facts and the rendition of the facts that we went through and certainly now we've had some additional testimony, but that evidence still exists but now there's additional testimony, that I believe that there has been substantial circumstantial evidence which reasonably tends to prove the guilt of the accused or from which the guilt of the Defendant could be fairly and logically deduced, and therefore, based upon that the Court respectfully declines to grant your motion for a directed verdict.

(R. 514-15). After the jury convicted Harry of murder, Harry renewed his previous motions for a

directed verdict as a motion for a new trial, which was again denied by Judge John. (R. 519-20).

Regarding this particular matter and the motion of the Defense regarding its previous matters raised to the Court's attention now in their motion for a new trial the evidence in this matter was of a circumstantial nature. As I previously indicated I believe there is more than sufficient evidence to send the matter to a jury for their consideration and I again reaffirm that. I believe there was competent evidence presented in this matter that would and does sustain the verdict of the jury in this matter. It is not my position at this point in time on a motion for a new trial and where we are at this stage of the proceedings to substitute my judgment if there – if I had a difference as to how I would have voted for that of the jury and overturned a verdict on those matters. I have examined the evidence previously regarding the directed verdict motions. I have examined the evidence regarding this motion for a new trial. There is and without question more than sufficient evidence to submit the question of guilt to the jury and more than sufficient evidence to sustain the jury's verdict of guilty of the crime of murder. Therefore, I respectfully decline to grant your motion for a new trial.

(R. 520). Harry alleged on appeal Judge John erred in denying his directed verdict motions because none of the testifying co-defendants, whose charges had not yet been disposed of, or Castro, or Harry, admitted there was an agreement that if the victim did not surrender the T.V. or money he would be assaulted, shot, or murdered. The Court of Appeals correctly affirmed.

The gist of Harry's argument is the State's case failed because there was no testimonial evidence of an express agreement between Harry and Castro to assault, injure or kill the victim. The effect of his analysis is unless the State can produce evidence of actual discussions between co-conspirators or co-perpetrators while planning the crime, a defendant's testimony (after the State rests its case-in-chief) he never conspired with his co-defendant, and never intended to commit any crime, will mandate a directed verdict on any charge requiring an agreement, premeditation, or an intent to commit a crime. The defendants' concerted actions leading up to and during the crime will be irrelevant, while their protestations of innocence and claim of lack of intent will be paramount. Such a result renders the well-established directed verdict analysis, and the applicable standard of appellate review, completely meaningless. Further, it would be an

impossible burden for the State to meet in a case such as this where the 2 key perpetrators held a private discussion, refused to cooperate or incriminate themselves, and their actions clearly show there was concert of action and both are guilty under the law of parties to a crime. This Court recently decided this issue against Petitioner. State v. Larmand, 2015 W.L. 4751033 (2015).

Standard of Review / Directed Verdict
(Appellate)¹³

A defendant may only appeal from a trial judge's denial of a motion for a directed verdict of acquittal where there is a total failure of competent evidence tending to establish the charge laid in the indictment, and absent an error of law, the ruling must stand. State .v Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984). In reviewing a denial of a directed verdict, this Court views the evidence **and** all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 625 S.E.2d 641 (2006). The appellate court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Brown, 402 S.C. 119, 740 S.E.2d 493 (2013). If there is any direct evidence, or if there is substantial circumstantial evidence, reasonably tending to prove the defendant's guilt, this Court must find the trial court properly submitted the case to the jury. Brown; State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011). This Court considers only the existence or non-existence of evidence, not witness' credibility, in reviewing the denial of a directed verdict. State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2004). Our Courts have repeatedly held, where the evidence is circumstantial, the evidence will be considered as a whole, not in isolation, in determining whether there was sufficient evidence to submit the case to the jury. State v. Frazier, 386 S.C. 526, 689 S.E.2d 610 (2010)(viewing circumstantial evidence

¹³ This Court is well aware of its general standard of review to review errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous. State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001). And, that this Court is limited to determining whether the trial court abused its discretion, Id. an abuse of discretion occurring when the trial court's decision is unsupported by the evidence or controlled by an error of law. State v. Garrett, 350 S.C. 613, 567 S.E.2d 523 (Ct. App. 2002).

“collectively” and “as a whole” to hold directed verdict properly denied).¹⁴ If the State has presented any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, this Court must affirm the trial court’s decision to submit the case to the jury. State v. Hepburn, 406 S.C. 416, 753 S.E.2d 402 (2013).¹⁵ “The appellate court may reverse the trial judge’s denial of a motion for a directed verdict only if there is no evidence to support the judge’s ruling.” State v. Stanley, 365 S.C. 24, 42, 615 S.E.2d 455, 464 (Ct. App. 2005).

(Trial Court’s Standard)

A motion for directed verdict is properly denied when there is any evidence, direct or circumstantial, that reasonably tends to prove the defendant’s guilt. State v. Brandt, 393 S.C. 526, 713 S.E.2d 591 (2011). When ruling on a directed verdict motion, the trial court is concerned with the existence or nonexistence of evidence, not its weight. Cherry, 361 S.C. at 593, 606 S.E.2d at 477-78; State v. Gaines, 380 S.C. 23, 667 S.E.2d 728 (2008). A trial court should grant the directed verdict motion when the evidence merely raises a suspicion the accused is guilty, as suspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. Cherry, 361 S.C. at 594, 606 S.E.2d at 478. However, “a trial judge is not required to find that evidence infers guilt to the exclusion of any other reasonable hypothesis.” Hepburn, 406 S.C. 416, 753 S.E.2d 402. The trial judge is required to deny the motion for a directed verdict and submit the case to the jury if there is *any* direct evidence or *any* substantial circumstantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced. Hepburn, 406 S.C. at 429, 753 S.E.2d 402, *quoting*

¹⁴ Cherry, 361 S.C. at 595, 606 S.E.2d at 478 (circumstantial evidence, when combined, was sufficient to for the fact finder to infer guilt); State v. Buckmon, 347 S.C. 316, 323-24, 555 S.E.2d 402, 405-06 (2001).

¹⁵ Further, when the defendant offers proof in his case in chief, the appellate court is to consider all of the evidence in ruling on whether a directed verdict motion at the close of the defendant’s case was properly denied. *See* Hepburn, 406 S.C. at 429-42, 753 S.E.2d 402, *adopting* State v. Harry, 321 S.C. 273, 468 S.E.2d 76 (Ct. App. 1996).

State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000).

The Lack of Merit of Harry's Argument

The State more than satisfied the standard to overcome the motion(s) for a directed verdict on the charge of murder. Judge John properly denied the motion for a directed verdict at the close of the State's and Harry's case. There was both direct and substantial circumstantial evidence from which the trial judge and the jury could find Harry guilty of murder pursuant to the law of parties to a criminal offense, i.e. the hand of one is the hand of all and/or as one present aiding and abetting. Considering the evidence, including all inferences, in the light most favorable to the State, Judge John did not err, i.e. abuse his discretion, in denying the motion(s) for a directed verdict.

The Law

Harry argues the State presented insufficient evidence that he is responsible for the victim's murder under an accomplice theory.

Under the "hand of one is the hand of all" theory of accomplice liability, 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. A defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense. [However, mere presence and prior knowledge that a crime was going to be committed, without more, is insufficient to constitute guilt. [Rather,] presence at the scene of a crime by pre-arrangement to aid, encourage, or abet in the perpetration of the crime constitutes guilt as a principal.

State v. Thompson, 374 S.C. 257, 261-62, 647 S.E.2d 702, 704-05 (Ct. App. 2007)(internal quotations and citations omitted). "Under an accomplice liability theory, 'a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act.'" See State v. Condrey, 349 S.C. 184, 194, 562 S.E.2d 320, 325 (Ct. App. 2002)(quoting State v. Langley, 334 S.C. 643, 648-49, 515 S.E.2d 98, 101 (1999). 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. *Id.* at 193, 562 S.E.2d at 324 (stating under the hand of one is the hand of all theory, “[a] formally expressed agreement is not necessary to establish the conspiracy” which brings the accomplice to the scene of the crime).¹⁶

The Evidence
(The State’s Case)

At the close of the State’s case, viewing the *evidence* and *all inferences in the light most favorable to the State*, the following was established. Petitioner Harry was the only person with a motive to injure, shoot, *or* kill the victim Kevin Bowens. Harry was angry his girlfriend, Ashley, had given his T.V. away, and she had given it to *another man*. Harry was angry the victim, Ashley’s *new boyfriend*, would not return his T.V. or pay him cash for it. Harry needed the T.V. or the money for the T.V. because of an impending probation hearing. Saire Castro, the shooter, had no motive to shoot, injure, maim or kill the victim *other than vicariously for Harry*, the person who came and got him before the incident and brought him to the crime scene. (R. 46-83; 131-93).

The State’s evidence established that once Harry found out who had the T.V. and where he resided, Harry did not drive to the victim’s residence, *in Murrell’s Inlet*, which was just 2.9 miles away, with Ashley in his vehicle and attempt to obtain the return of the T.V. peacefully. Instead, he drove completely out of the way and went to another apartment complex, approximately 34 minutes away in Myrtle Beach, where Saire Castro, a man known the carry a .357 magnum pistol, resided. Once there, Harry left Ashley in the vehicle, went directly into the apartment in which

¹⁶ Harry also argues the Court of Appeals erred in relying on California jurisprudence; however, the Court of Appeals merely cited *People v. Miller*, 2008 WL 1899560 (Cal. Ct. App. 2008) as *informative but not controlling*. *Harry*, 413 S.C. at 541, 776 S.E.2d 387.

Castro resided, and privately and secretly enlisted Castro's cooperation and support. Harry did not ask to speak with anyone else, only Castro, the man known to carry a .357 revolver and who had recently been arrested in possession of 2 other guns and drugs. There is certainly evidence Harry enlisted the assistance of Castro because Castro carried a loaded firearm, and he wanted such a person with him when he confronted the victim over the T.V. or the money for the T.V. Harry did not need Castro's assistance to load or transport the T.V. as Harry already had *a truck*, which he was driving, and the victim had loaded and unloaded the flat screen T.V. by himself on 2 occasions with no assistance from others. Further, the evidence established Harry knew where Kings Court subdivision was located, and he had Ashley in the truck with him when he was just 2.9 miles from the victim's residence. Further, the record shows that after the private conversation between Harry and Castro, in Byrne's apartment, which lasted 5 to 8 minutes, Castro agreed to assist Harry and immediately walked into the kitchen and retrieved his loaded .357 magnum revolver from above the kitchen cabinet, and secreted it on his person, indicating a nefarious purpose for arming himself. There is certainly an inference from this evidence that Harry instructed Castro to come with him and to bring the loaded .357 magnum pistol with him because they were going to need the gun in the confrontation with the victim, i.e. they were going to force, intimidate, injure, or kill the victim if he did not produce the T.V. or money for the T.V. Castro also enlisted the support of a third (3rd) man, Tommy Byrne. (R. 46-83; 131-93; 194-201).

All 3 men left Byrne's apartment complex together, in 2 separate vehicles, with Harry leading the way, with Ashley, the person who had given the T.V. to the victim, in tow. Harry, driving the red truck, led Castro, the man with the loaded gun driving his own vehicle, directly to the victim's residence, in Kings Court subdivision, except for only 1 stop, at a convenience store, where the 3 men got out and briefly left Ashley alone in the truck. Harry in the truck then led

Castro and Byrne in their vehicle to Kings Court subdivision, which Harry knew the location of. With Ashley providing specific directions as to the location of the victim's home inside the subdivision, Harry in his vehicle and Castro in his vehicle drove swiftly down the victim's street and hurriedly drove up *into the victim's yard*. This all occurred at approximately 10:00 to 11:00 p.m. on March 1st, while dark. (R. 46-83; 131-93; 194-201; 114-27; 287-352; 35-37; 88-113).

All 3 men exited the vehicles together and began yelling loudly across the yard. All 3 men then confronted the victim in the victim's own yard. The 3 men surrounded the victim in semi-circle fashion and exchanged words with the victim regarding the victim giving up the T.V. or money. Harry then directed Ashley to get out of the truck, and Harry directed her to confirm the victim took the T.V. Ashley accused the victim of stealing the T.V., which the victim denied. Harry told Ashley to get back in the truck. When the victim categorically stated the last time that he was not giving them the T.V. or any money, Castro, the man who Harry brought to the scene, the man Harry brought to the scene with a loaded revolver, immediately pulled his .357 revolver and shot the victim 3 times. When the victim's girlfriend came out of the victim's home, the victim was on the ground resting on his forearms, and the 3 men were still standing near him. Another neighbor testified the men then moved back to their vehicles at a regular pace, i.e. they were not running. (R. 287-352; 114-27; 58-59; 205-14; 165-71; 35-37; 88-113; 278-86).

All 3 men then left the murder scene and the subdivision together in the same 2 vehicles they came in. Harry directed Ashley to drive the red truck, which she did. Castro was driving his vehicle with Byrne inside. The 2 vehicles left the subdivision slowly. Harry was again leading the way as the 2 vehicles left the subdivision. Castro directed Byrne to dispose of the murder weapon, which he did, but not before wiping the gun down to remove any fingerprints. When police tried to stop Harry's vehicle, Harry instructed Ashley to continue driving and to not obey

the police blue light, which she did. When Ashley finally ignored Harry's instructions and began to stop the truck, Harry fled from the passenger side on foot before the vehicle was even stopped. He eventually fled back to his residence on 544, and then Harry and his brother took McPhail to Byrne's apartment, the same apartment where Harry and Castro had the earlier conversation and where Castro retrieved the firearm. Harry then fled from there with his brother Kason.¹⁷ Castro, like Harry, fled from the police station, disposed of the murder weapon, changed his appearance, and fled the area with the assistance of McPhail. (R. 59-60; 119-20; 173-277; 207-08; 237-46).

There was more than sufficient direct and substantial circumstantial evidence Harry was guilty of murder under South Carolina's law of parties to a criminal offense to overcome the motion to for a directed verdict. State v. Gibson, 390 S.C. 347, 701 S.E.2d 766 (Ct. App. 2012); State v. Ward, 374 S.C. 606, 649 S.E.2d 145 (Ct. App. 2007)(holding in a case with similar facts, evidence the defendant and his co-defendant together chased after 2 men in the melee of a parking lot brawl and fired shots, killing a bystander, was sufficient to overcome directed verdict motion); *see* State v. Langley, 334 S.C. 643, 515 S.E.2d 98 (1999)(indicating evidence the defendant and co-defendant were seen together, circumstantial evidence placing defendant at the scene of the crime, and eye-witness testimony, was sufficient to warrant submitting the case to the jury on any theory of liability, including the hand of one is the hand of all theory). The evidence, and all of its inferences viewed in the light most favorable to the State, especially the actions of Harry and Castro, indicates there was an agreement that they were going together to the victim's home at night to force or intimidate the victim into returning the T.V. or money for the T.V., and if the

¹⁷Harry not only fled from the scene, but led Castro and Byrne in their flight from the scene and then fled on foot just moments after the murder when police attempted to apprehend him. Flight is evidence of guilt when sufficiently connected to the murder, as it was in this case. State v. Beckham, 334 S.C. 302, 513 S.E.2d 606 (1999); State v. Al Amin, 353 S.C. 405, 578 S.E.2d 32 (Ct. App. 2003) State v. Milan-Hernandez, 287 S.C. 183, 336 S.E.2d 476 (1985).

victim refused, the victim would be injured or killed by Castro, Harry's enforcer or "muscle." And, the victim died as a proximate result thereof. Accordingly, Judge John did not abuse his discretion in denying the directed verdict. Gibson; Ward; Langley.

The Defense Case

The Defense' case only added to the evidence of guilt. It further solidified the State's case against Harry. Hepburn, 406 S.C. at 429-42, 753 S.E.2d 402, *adopting Harry*.

Castro testified the motive for confronting the victim was not just over a T.V., but over *drugs or drug money* the victim had stolen from Ashley's apartment the night he stayed over. All of the co-defendants, except McPhail [who was a drug user], were drug dealers. Castro admitted he had been arrested several days before the incident in possession of drugs and guns. Byrne admitted in the State's case he was a drug dealer. Castro testified Byrne was a drug dealer. Several witnesses testified Harry was a drug dealer. Castro admitted he had another gun, a .357 magnum pistol not seized by police, he took with him the night of the murder. In addition to being drug dealers, Castro admitted he and Harry were also rap musicians, and they had been collaborating on rap music for approximately 3 years at the time of this murder. And, they each had several recording studios which they used to collaborate on their rap music. (R. 367-68, 390-92, 376, 378, 384-85).

Castro admitted Harry came to Byrne's apartment on the night of March 1st. Although he denied the secret meeting with Harry occurred, Castro admitted after Harry came to Byrne's apartment, he [Castro] left the apartment with Harry and Byrne and carried his loaded .357 revolver with him. He also admitted he was known to carry a weapon. Castro admitted it was Harry driving the red truck who led him [Castro] to the victim's residence. Castro admitted he did not know the victim. Castro also admitted it was not his T.V. at the victim's house. Further, Castro admitted Ashley was not his girlfriend. And finally, he admitted the confrontation with

the victim was not his “beef” but Harry’s. (R. 390, 392-93, 400-01).

Neither the trial judge nor the jury was required to believe *Castro’s assertions* the meeting Byrne described under oath between Castro and Harry never took place. Byrne testified the clandestine meeting did take place between Harry and Castro, and it lasted for 5 to 8 minutes, whereupon Castro immediately went into the kitchen to retrieve the loaded .357 revolver and asked Byrne to go with them. Nor was the judge or jury required to believe Castro’s assertion the victim pulled his firearm before Castro shot him 3 times. Byrne also testified the victim did not pull his weapon prior to Castro shooting him, and the E.M.T. at the scene testified when the victim was rolled over after being murdered, the victim’s handgun fell out of the victim’s waistband.¹⁸

Harry’s testimony did not help him either. Harry admitted he was a drug dealer [in cocaine] and had no vehicles registered in his name. He admitted the vehicle he chose to drive to the victim’s home did not belong to him but was registered in another person’s name, McPhail’s. He admitted he did give cocaine to McPhail in exchange for McPhail taking his “baby’s mother’s” SUV, which allowed Harry to use McPhail’s truck on the night in question, a vehicle that could not be traced to Harry except through McPhail. (R. 470, 439-40, 460-61, 500, 504, 442, 444).

Harry also admitted his brother Kason was a drug dealer; Castro was a drug dealer; Byrne was a drug dealer; another associate was a drug dealer, and implied Ashley was also a drug dealer. (R. 436, 441, 445, 462, 475-76, 488, 489, 493-94, 500, 503). His testimony further established the individuals surrounding him on the date in question and the days leading up to the murder, which included McPhail, Byrne, Castro, Ashley, and Evelyn were repeatedly taking orders from

¹⁸ Castro also admitted he lied to police during questioning about his involvement in the murder, lied about who was driving the red truck, left the police station during a break in interrogation; recovered the murder weapon from where Byrne had thrown it and disposed of it in a lake, shaved his head to change his appearance, McPhail assisted him in escaping from the area, and he fled to Florida to avoid arrest and was arrested there by U.S. Marshalls with weapons drawn. He also admitted before he shot the victim, Harry gave the victim a “head nod.” (R. 379-80; 393-400, 368).

him or at the least acting at his direction. (R. 440, ll. 4-12; 448, ll. 2-13; 458, ll. 1-10, 498, 502-04).

Harry contradicted his own witness, Castro, denying the confrontation was over drugs or drug money, but claiming it was over the T.V. or money for it as the State's witnesses testified.¹⁹ He incredibly denied any strong words were exchanged between the 3 men and the victim. He admitted, in addition to being a drug dealer, he is a rap musician who owned or operated several studios, and collaborated with Castro, another drug dealer, in the recording industry. And, he knew Castro had recently been arrested in possession of 2 guns. (R. 441-42, 470-74, 483, 499-500, 506).

Harry admitted the first time he became aware Ashley had given the T.V. to another man, and not a woman, was on March 1st, the day of the victim's murder. He admitted he had called the victim earlier in the evening and sought to meet him at a neutral location about the T.V. or money for the T.V., but the victim would not meet him. He admitted he left the mobile home on the night of March 1st, in McPhail's red truck, to meet Ashley around 9:00 p.m., while dark. He admitted he met Ashley on the *night* of March 1st; she got in the vehicle with him, and he did not go directly to the victim's home, which was nearby, but to Castro's residence. (R. 443-44, 447, 482-90).

While he denied the secret meeting with Castro as testified to by Byrne, he admitted after going into Castro's apartment, Castro and Byrne followed him to the victim's home in a separate vehicle. He admitted the 2 vehicles stopped at a convenience store before approaching the victim's home. He admitted when he arrived at the victim's home he parked in the victim's yard. He admitted he parked the truck in the victim's yard with the front of the truck facing the victim's house. He also admitted he, Castro, and Byrne approached the victim who was standing next to his car in his driveway. He admitted he had met the victim on a previous occasion, and at that time the victim expressed an interest in Ashley. He admitted the victim told him he had paid

¹⁹ Harry also conceded several times the victim did not do anything to justify his murder. (R. 464, 466, 479).

Ashley for the T.V. with cash and marijuana. He admitted Ashley then accused the victim of stealing the T.V. To which the victim responded that he had given her money and marijuana for the T.V. Harry admitted he told Ashley to get back in the car. He admitted Castro had his hand behind his back during the confrontation. He admitted Castro, the man he had brought to the scene, then shot the victim 3 times with his .357 revolver. (R. 448-56, 478, 480, 505-07).

Harry admitted all 3 men then got back in their vehicles, and he directed Ashley to drive his vehicle. He admitted his vehicle led the way out of the subdivision just as it had led the way to the victim's home. Castro's car followed his vehicle after they got out of the subdivision and he told Ashley to keep driving when the police blue lighted Castro's car. (R. 457-59, 480).

Harry admitted he fled from the red truck before the police were even able to stop it. He also admitted his cell-phone, which he had used to text Ashley and contact the victim shortly before the murder, disappeared during his flight from police.²⁰ He admitted he was using marijuana the entire evening and night of the murder. And, he contradicted Castro, regarding the fact Castro led the way out of the subdivision, testifying his vehicle [Harry's] led the way in and out of the victim's subdivision. (R. 498, 461-62, 500-01, 457-58, 496).

He further admitted he had previously been convicted of grand larceny, and was on probation at the time of the murder. He corroborated the State's witnesses' testimony that he had an impending probation hearing the morning following the murder. (R. 434-35, 459, ll. 22-23).

He further admitted he owned no vehicles in his own name, but relied on his associates, such as Evelyn, Ashley, or McPhail for transportation. (R. 436-38, 503-04). He further admitted he had no real job and the majority of his income came from selling drugs. (R. 470, 438). And, he

²⁰ Destruction or attempted destruction of evidence is evidence of guilt. Beckham, 334 S.C. 302, 513 S.E.2d 606; State v. Wells, 162 S.C. 509, 161 S.E. 177 (1931)(similar).

admitted he lied to police numerous times when questioned during the investigation. (R. 493, 503).

Importantly, Harry never claimed that he knew the victim carried a firearm or that he knew the victim dealt in drugs, and as a result, he needed protection when he went to the victim's residence. In fact, Harry denied he took Castro with him to the scene for the purpose of helping him retrieve the T.V. or the money for the T.V. (R. 434-509).

In summary, the defense' case allowed the State to present a complete and full picture of how and why the victim was murdered on the night of March 1, 2011. It solidified the State's theory of the case that Harry was guilty of murder under the law of parties to a crime. Harry, a drug dealer and rap musician, initiated and coordinated this entire crime including going and getting a man with a loaded .357 magnum pistol, who was also a drug dealer and fellow rap musician, to confront, intimidate, and coerce the victim into producing the T.V. or money, and if the victim did not comply with Harry's demands for the same, to assault, shoot, or kill the victim. Judge John did not err in denying the motion for a directed verdict at the close of the defense' case. Hepburn, 406 S.C. at 429-42, 753 S.E.2d 402, *adopting Harry, supra*.

CONCLUSION

The Court of Appeals correctly affirmed. The petition should be denied.

Respectfully submitted,

ANTHONY MABRY
Assistant Attorney General

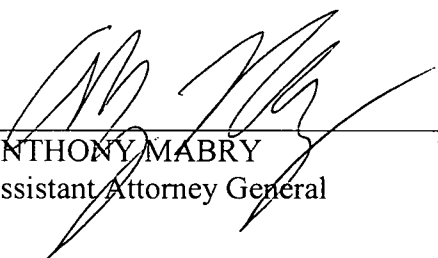
By:  _____

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November 18, 2015

CERTIFICATE OF SERVICE

I, **Anthony Mabry**, hereby certify that I have served the *Return to Petition for Writ of Certiorari* in the foregoing action by depositing copies in the United States Mail, postage prepaid, to Meliah Bowers Jefferson, Esquire WYCHE, P.A., 44 East Camperdown Way, Greenville, SC 29601 and by InterAgency Mail to Robert M. Dudek, Chief Appellate Defender, Division of Appellate Defense, 1330 Lady Street, Ste. 401, Columbia, SC 29201 this 18th day of November, 2015.



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