

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions

J. Derham Cole, Circuit Court Judge

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SC Court of Appeals

Appellate Case No. 2013-001953

The State Respondent,

v.

Julia B. Phillips.....Appellant.

FINAL REPLY BRIEF OF APPELLANT JULIA B. PHILLIPS

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STATEMENT OF ISSUES ON APPEAL

1. Whether the trial court erred in denying Julia's directed verdict motions where the State presented character and some motive evidence but essentially no evidence that Julia intentionally, or through a common design, aided, abetted, or assisted in the commission of Melvin Roberts's murder?

I. INTRODUCTION

This case may be the first in State history wherein an individual was convicted of accomplice murder without the State having first identified—let alone tried or convicted—the actual killer.¹ Fundamentally, the State’s theory is that Julia Phillips, an elderly woman with no means of support other than Melvin Roberts, a man with whom she frequently broke-up, only to be reunited time and again, worked with an unidentified killer to murder Melvin because (according to the State) he was planning to break up with her again. And, Julia allegedly did this despite the fact that, with Melvin’s death, she lost all means of support. More suspect still, is the State’s implicit contention that Julia found this unidentified killer—on her own—and that she planned and assisted with Melvin’s murder—all without leaving a trace as to who he is or how she found him.

This case has confounded authorities for more than 5 years and, eventually, someone had to be found guilty of something. The sole issue here is whether the State proved, by means of *substantial* circumstantial evidence, that Julia actually took some *overt act* to aid, abet or assist Melvin’s killer. In other words, did the State prove that Julia is the right someone? It did not.

II. ARGUMENT

1. The State Has Never Introduced Any Evidence of an Overt Act.

“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.*” *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010) (emphasis added); *see also*

¹ The undersigned has been unable to locate a case wherein an individual was convicted of murder under an accomplice liability theory without the State having found the person he or she allegedly aided or abetted.

State v. Lewis, 403 S.C. 345, 356, 743 S.E.2d 124, 130 (Ct. App. 2013) (“an overt act is required to be held liable for aiding and abetting”). Nothing in the State’s response contradicts Julia’s argument that, at trial, the State did not show that she took any overt act. Indeed, the State’s response barely discusses its burden of demonstrating an overt act. At most, the State’s response focuses on three pieces of alleged evidence.

First, the State discusses Julia’s alleged inconsistent statements. However, even if Julia acted “inconsistently” after being tied up while her boyfriend was being brutally murdered, nothing she said or did following Melvin’s murder ever indicated that she actually took any overt step to murder him.

Second, the State points to Julia’s conversations with Guy Blankenship. These conversations could, potentially, demonstrate that Julia was *considering* taking an overt act. However, Blankenship never testified that either he or anyone he knew, ever actually did anything to assist Julia. And, Blankenship never testified that he was aware of anything Julia *actually did* in an attempt to murder Melvin. Thus, at most, these alleged conversations demonstrate that Julia was *thinking* about killing Melvin—not that she took any overt step to do so.

Third, the State notes the gunshot residue on Julia’s sleeve. This gunshot residue demonstrates, at most, mere presence. *See Mattison*, 388 S.C. at 480, 697 S.E.2d at 584 (“Mere presence at the scene is not sufficient to establish guilt as an aider or abettor.”). It does not demonstrate aiding, encouraging, or abetting. *See id.* (“[P]resence at the scene of a crime by pre-arrangement to aid, encourage, or abet in the perpetration of the crime constitutes guilt as a principle.”).

In short, nothing in the State's response changes the fact that, at trial, the State did not demonstrate with any evidence, let alone substantial circumstantial evidence, that Julia took at least one overt step in furtherance of Melvin's murder.

2. The State's Version of The Standard of Review is Incorrect.

According to the State, "[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." (Resp. Br. p. 27) (citing *State v. Schrock*, 283 S.C. 129, 322 S.E. 2d 450 (1984); *State v. Tyner*, 273 S.C. 646, 258 S.E.2d 559 (1979); *State v. Irvin*, 270 S.C. 539, 243 S.E.2d 195 (1978)). This is not the modern standard of review.

Although some older cases include the phrase "total failure" when discussing directed verdict appeals, the standard for the trial court and this Court is well-stated and oft-repeated:

When reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the state. If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must find the case was properly submitted to the jury.

State v. Thompson, 413 S.C. 590, 610, 776 S.E.2d 413, 424 (Ct. App. 2015); *see also State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011) ("This Court has repeatedly affirmed the principle that when the State fails to produce substantial circumstantial evidence that the defendant committed a particular crime, the defendant is entitled to a directed verdict."). Furthermore, the circuit court should grant a directed verdict motion

when the evidence merely raises a suspicion the accused is guilty. *Odems*, 395 S.C. at 586, 720 S.E.2d at 50.

Therefore, to the extent the State contends that anything short of a “total failure” of competent evidence requires affirmance, the State is incorrect.

3. Julia’s Alleged “inconsistent statements” Cannot be Used as Circumstantial Evidence Against Her.

As set forth in Julia’s opening brief, the only circumstantial evidence against her was the single particle of gunshot residue on her sleeve (which could have come from anywhere at any time, including when she was placed in a police car or covered in a police issued blanket during her initial interview) and the testimony of Guy Blankenship (Gaffney’s career snitch and black-market plastic surgeon), that Julia asked him about hiring a hitman.

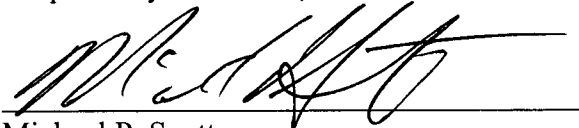
However, most of the State’s version of the facts and some of the State’s argument in response focuses, instead, on Julia’s alleged inconsistent statements. Julia was not inconsistent and never wavered (and still does not) that she is innocent of any participation in Melvin’s murder. Regardless, in ruling on a directed verdict motion, any consideration by the trial court, or this Court, of Julia’s alleged inconsistent statements is improper because Julia did not testify at trial. *See In re Richard D.*, 388 S.C. 95, 99, 693 S.E.2d 447, 449 (Ct. App. 2010) (allowing consideration of witness’s inconsistent statements at directed verdict stage because witness testified at trial); *State v. Crawford*, 362 S.C. 627, 634, 608 S.E.2d 886, 889–90 (Ct. App. 2005) (prior inconsistent statements may be used as substantive evidence on directed verdict “when the declarant testifies at trial and is subject to cross examination”).

Consequently, this Court's sole focus should be on whether the single particle of gunshot residue on Julia's sleeve and Guy Blankenship's testimony that Julia asked him about possibly hiring someone to kill Melvin (without any testimony that she actually did so) rises to the level of substantial circumstantial evidence. It does not.

III. CONCLUSION

For these reasons and those set forth in Julia's opening brief, this Court should **REVERSE** the trial court's denial of Julia's directed verdict motions and direct a verdict of **ACQUITTAL**.

Respectfully submitted,



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**PROOF OF SERVICE FOR FINAL REPLY BRIEF OF
APPELLANT JULIA B. PHILLIPS**

I, Michael P. Scott, hereby certify that I have served a copy of the PROOF OF SERVICE FOR FINAL REPLY BRIEF OF APPELLANT JULIA B. PHILLIPS upon counsel for the other parties by mailing copies to them at the address below via the United States Mail this 24th day of November, 2015.

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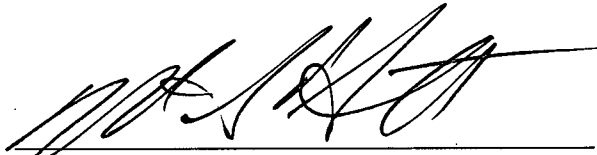
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CERTIFICATE OF COUNSEL

The undersigned certified that this Final Reply Brief of Appellant Julia B. Phillips complies with Rule 211(b), SCACR.

November 24, 2015



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