

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
The Honorable J. Derham Cole, Circuit Court Judge
Appellate Case No. 2013-001953

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SC Court of Appeals

THE STATE

Respondent

V.

Julia Bright Phillips

Appellant

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

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

STATEMENT OF THE CASE

Appellant Julia Phillips and another person murdered Melvin Roberts on February 4, 2010 in York County. On May 18, 2010, appellant was arrested for the murder. The York County Grand Jury indicted appellant for Roberts' murder. Appellant proceeded to a jury trial from August 26th - September 5th, 2013 before the Honorable J. Derham Cole, Circuit Court Judge. At the trial's conclusion, the jury found appellant guilty of Roberts' murder. Judge Cole sentenced appellant to life imprisonment for Melvin Roberts' murder. (R. 1, Supp. R.p. 1-2, 3-7, 8, Tr. pp. 1, 21-22,; 1171-75, 1192, ll. 6-11; *Ind. # 2011-GS-46-1851*).¹ This appeal followed raising only one (1) issue.

¹ This case and appellant's trial was featured on *Dateline*, *Investigation Discovery*, and *Southern Fried Homicide*.

RESPONDENT'S STATEMENT OF FACTS

On the evening of February 4, 2010, while dark, seventy-nine (79) year old Melvin Roberts ("Melvin") was murdered just off of the driveway to his home, on the patio, as he was about to enter the back door to his residence located at 314 Roberts Drive in York.² Melvin was first beaten with a blunt object about the back and sides of his head. He was then shot at or a gun was discharged near his neck; however, this did not cause his death. Melvin died of strangulation. A tie wrap or zip tie was placed around Melvin's neck and pulled tight causing him to suffocate. Based on the autopsy, the tie wrap was first pulled tight as Melvin lay on his back or side. Melvin was then turned over, a person placed their foot on Melvin's neck or shoulder, and the tie wrap was pulled even tighter strangling Melvin to death. In summary, Melvin was intentionally killed. (R. 29-48, 50-79, 94-95, 142-163, Tr. pp. 213-232, 234-263, 280-81, 329-50).

Nothing was taken from Melvin's person. His wallet was still in his back pocket and contained several hundred dollars in cash. His jewelry was still on his person. His vehicle was not stolen even though his keys were lying next to his body. Melvin's residence was not burglarized or broken into. His cell phone was also lying next to his body. In summary, there was no robbery. Melvin was simply murdered. (R. 29-48, 50-79, 94-95, 142-163, 421-22-429-32, Tr. pp. 213-232, 234-263, 280-82, 329-50, 614-15, 622-25).

The exact time of Melvin's death is unknown. Melvin was last seen alive at his law office around 4:30 p.m. after just returning from Florence, S.C. with some friends. Melvin lived just a few miles from his law office which was also located in York. (R. 397-98, Tr. pp. 590-91).

² Melvin was the prior mayor of York, a prior city councilman, and a practicing attorney for fifty-five (55) years. The street Melvin lived on is named after him.

At **7:30 p.m.**, Melvin's long-time girlfriend, appellant Julia Phillips ("Phillips"), called 911 and reported *a robbery* at Melvin's residence. However, police later discovered through cell phone records, that prior to calling 911, Phillips had called her son, Hunter Stevens ("Hunter"), two (2) times in Gaffney.³ In the first call to Hunter, Phillips actually dialed Hunter's phone number. In the second call, Phillips may have hit redial and talked to Hunter again. The conversations with Hunter lasted approximately 30 seconds each. Only after talking to Hunter, did Phillips then call 911. Phillips claimed in the 911 call that a robbery had been committed against her and Melvin, and she thought Melvin had been shot. In Phillips' 911 call, she claimed Melvin was her husband; however, the two were never married. Phillips told the 911 operator that *a black man* robbed her. (R. 397-98, 80-82, Tr. pp. 580-81, 266-68, State's Ex. 10 [911 tape]; R. 80-82, 167-68, Tr. pp. 266-68; Tr. pp. 356-57, State's Ex. 56 [phone records], R. 632, Tr. p. 833).

The day, evening, and night of Melvin's murder, it was raining in York, S.C. When police responded to Phillips' 911 call, made at **7:30 p.m.**, they found Phillips sitting in her vehicle, an SUV, in Melvin's driveway. She had duct tape around her hair and her neck, on her wrists, and on her leg, i.e. Phillips had not removed the duct tape from her person so it was readily visible when police arrived. (R. 29-48, 50-79, 254-55, 366-84, 421, 423-24, Tr. pp. 213-232, 234-263, 443-44, 559-77, 614, 616-17).

Police found Melvin on the patio face down and dead. He had been beaten about the head with some sort of blunt object. He had also been shot at near the neck area while lying on the patio, but this gunshot passed through Melvin's jacket and shirt collar, and Melvin was not

³ Gaffney is approximately a 30 minute drive from York.

appreciably wounded by this gunshot.⁴ No shell casings were found around Melvin's body or anywhere at the crime scene indicating the gun used was probably a revolver. Melvin had a zip tie around his neck that had been pulled so tight it strangled him. The zip tie was still in place. Melvin also had injuries to his right eyebrow, the bridge of his nose, his hands, and his knees. The injuries to the face and knees probably occurred after Melvin was struck with the blunt object and collapsed, or when his body was rolled over and the tie wrap pulled tight. (R. 29-48, 50-79, 94-96, 142-63, Tr. pp. 213-232, 234-263, 280-82, 329-50).

Phillips told the first two (2) officers to arrive on the scene that she could not find *her husband*, Melvin, although Melvin was laying just a few feet from her vehicle. Phillips also told one (1) of the first officers to arrive that she was getting out of her vehicle when the alleged perpetrator grabbed her from behind and pulled her behind a brick wall, and her groceries and purse should be behind the brick wall. Police immediately noticed Phillips' groceries were still in the back of her vehicle, and her purse was still in the back of her vehicle. (R. 29-48, 50-79, 123-24, 257, 255, Tr. pp. 213-232, 234-263, 310-11, 446, 444).

Phillips claimed the perpetrator had *duct taped* her. She told police she was able to break free of the duct tape using a car key she had in her hand. However, police determined the duct tape had been cut, like with scissors or a knife, not torn or pried loose with a key. The duct tape was loose around Phillips' head, wrists, and her ankles, not tight as one would expect when a criminal duct tapes someone during a kidnapping or robbery. Further, even though a zip tie was

⁴ The bullet from this gunshot struck the patio and shattered into fragments and pieces. Some fragments and pieces of bullet were recovered that night, and some were recovered in the days that followed from the garden hose, door frame, and back porch. (R. 89, 94-96, 108, 310-13, 464, 633, Tr. pp. 275, 280-82, 294, 503-06, 660, 834).

used on Melvin, no zip tie was used on Phillips to bind her hands or feet. (R. 29-48, 50-79, 116-17, 260-63, 461-62, 466, Tr. pp. 213-232, 234-263, 302-03, 449-52, 657-58, 662).⁵

Phillips was not significantly injured. She required no medical treatment and did not ask for any medical treatment. She had scratches on her left hand. She had a scratch on her face. She also had a scrape on one (1) elbow, which she later admitted she received when she fell down after getting up off the ground after freeing herself from the duct tape. (R. 29-48, 50-79, 238-42, 245, 257, 255, Tr. pp. 213-232, 234-263 428-31, 434, 446, 444).

Phillips claimed the perpetrator had abducted her from beside her vehicle when she arrived at the residence before Melvin arrived.⁶ Phillips claimed the perpetrator carried her behind an approximately 8 foot tall brick wall and left her there. She claimed the attacker then attacked Melvin when Melvin arrived at his residence around 7:00 p.m. in his truck. She claimed it was a robbery and the perpetrator demanded money over and over again from her before Melvin arrived. (R. 29-48, 50-79, 257, 255, Tr. pp. 213-232, 234-263, 446, 444).

However, police found behind the brick wall a bank bag Phillips had allegedly brought with her when she arrived at the residence, and it contained a large amount of cash in the bag. Nothing was missing from the bag as far as police could tell. The bag was sitting upright and open, everything inside was filed nice and neat, and the contents of this bag were not wet or soggy. A bracelet Phillips' later claimed was missing was also found behind the brick wall near where the bank bag was located. In summary, police could not determine Phillips was robbed

⁵ Additionally, only a small amount of duct tape was used to bind Phillips. Only ten (10) pieces total were used to bind Phillips' head, wrists, and feet. (R. 466, Tr. p. 662). Phillips told police the perpetrator duct taped her at least three (3) different times. She told police he kept applying duct tape at different times. No loose or discarded duct tape was found at the scene. (R. 465-66, Tr. p. 661-62).

⁶ In one of her first statements, Phillips claimed the perpetrator grabbed her from behind, took her to the back of her vehicle, and slammed her against the vehicle. In later statements, she completely omitted this version of events.

either. (R. 29-48, 50-79, 89, 92-93, 98-99, 428-29, Tr. pp. 213-232, 234-263, 275, 278-79, 284-85, 621-22).⁷

Phillips claimed she heard the struggle between the perpetrator and Melvin when she was behind the brick wall, and heard a gunshot, but was behind the wall, some 60 feet from Melvin when the gunshot was fired. According to Phillips, the alleged perpetrator never returned to Phillips after the shot was fired. Phillips claimed she lay in the mud and rain for 30 minutes before being able to free her-self from the duct tape. She claimed she crawled and walked back to her car where she called 911. (R. 29-48, 50-79, Tr. pp. 213-232, 234-263).

However, police noticed immediately that Phillips' clothes were not wet except on the buttocks portion of her pants, which was damp. Her sweater vest was not wet, and her blouse was not wet. Her clothes were not wet as if she had been out in the rain for 30 minutes as she described. There was only a small amount of mud and that around the bottom of her jeans. Additionally, there was no mud in her car seats, where she claimed she retreated after the robbery and murder. Some white cloth rags or towels were found in her car, but they were not muddy either. She was immediately photographed by police at the scene, and again at the police station. (R. 29-48, 50-79, 96-98, 217-18, 424-27, 432-34, 524, Tr. pp. 213-232, 234-263, 282-84, 406-07, 617-20, 625-27, 723. ll. 15-17).

Phillips told police she never went near Roberts' body after the crime. In fact, Phillips sat in her vehicle for approximately one (1) hour after police arrived and never once got out of the car to check on Melvin. She did not inquire about Melvin's welfare until approximately an

⁷ In a later interview, Phillips claimed she was wearing three (3) bracelets and two (2) were still missing. She also claimed there was approximately \$200 in cash in the bank bag. Police could not verify her claims regarding her bracelets or the amount of cash in the bank bag. As far as police could determine, nothing was taken. (R. 663, Tr. p. 864). Phillips admitted in a later interview that no money was taken. (R. 662, Tr. p. 863, see also R. 358-59, 551-52).

hour after police arrived when she was about to be transported to the police station. In fact, she asked police if Melvin was dead. (R. 29-48, 50-79, Tr. pp. 213-232, 234-263).

Police discovered that there had been someone else there with Phillips when Melvin was murdered *or* there with Melvin before Phillips arrived.⁸ This unknown person had left one (1) set of foot prints leading to and then away from the house and down through some woods adjacent to Melvin's residence. This person was tracked with the use of a blood hound. The tracks terminated at or in a street adjacent to the woods, indicating the person had entered a vehicle there and drove away or had been picked up by someone. (R. 87, 101-04, 119, 123-24, 169-200, 423, 732, Tr. pp. 273, 287-90, 305, 310-11, 358-89, 616, 934).⁹

⁸ It must be remembered police could not determine the time of Melvin's murder. Phillips is the only person placing the time of the "robbery" and murder. Melvin's law office was just a few miles from his residence. He was last seen at his office at 4:30 p.m. Phillips did not call 911 until 7:30 p.m. Melvin could have been murdered at any time from after 4:30 p.m., when he was last seen and after he left his office and drove home, until the 911 call at 7:30 p.m., including any time before Phillips called her son Hunter at 7:29 p.m.

⁹ Police attempted to determine who the person who assisted Phillips in the murder was through fingerprint analysis and DNA testing; however, this was unsuccessful. (R. 706-29, Tr. pp. 908-31). Police attempted to obtain fingerprints from Melvin's vehicle, Phillips vehicle, and the duct tape without success. No fingerprints could be located or lifted from the bank bag either. (R. 104, 112-19, Tr. pp. 290, 298-304). Of course, if the other person wore gloves, there would be no fingerprints. Most of the duct tape from Phillips' person contained no DNA suitable for identification or no DNA at all. Some duct tape taken from Phillip's body or clothing contained Phillips' DNA as the major contributor exclusively or Phillips' DNA as the major contributor and a minor contributor who was an unknown female on piece of tape and a unknown male on another piece. The State's DNA expert testified this unknown DNA was touch DNA and could have come from any person who touched the duct tape before or after Phillips was taped including the male DNA coming from the first officer on the scene, Brian Trail, who could not be excluded, or the female DNA coming from a female officer who touched the tape, or a sales person or manufacturer of the tape. No CODIS match was made on these partial DNA profiles. On the zip tie, the major contributor was Melvin Roberts and an unidentified female *or* male DNA. While the minor contributor or partial DNA did not match Phillips' son Hunter, the DNA expert testified if the person who actually strangled Melvin with the zip tie was wearing gloves, their DNA would not be on the zip tie. The expert also testified the minor contributor on the zip tie could have been someone who manufactured or packaged the zip tie, someone who sold the zip tie and touched it, someone who handled it, or the perpetrator, if not wearing gloves.

Phillips was transported from the crime scene to the York Police Department to give a statement. On the way to the police station, Phillips kept saying she wanted or needed to call her son Hunter. However, at this time, police did not know Phillips had already talked to her son Hunter two (2) times before placing the 911 call. (R. 257, Tr. p. 446).

During her interview at the police station, Phillips appeared to be crying; however, Investigator Dale Edwards noticed there were no tears when Phillips appeared to be crying. He even zoomed in his camera on Phillip's face to record there were no tears. (R. 282, Tr. p. 473).

Phillips was again photographed at the police station with the duct tape on her. (R. 259-63, Tr. pp. 448-52). The duct tape was loose around her wrists and loose around her ankles. The tape on the head was not very tight. Officer Dale Edwards noticed the hands were not duct taped together, but apart, with a piece of tape between them. (R. 295-96, Tr. pp. 488-89). Photographs of Phillips' pants and clothing were also taken. (R. 269-73, Tr. pp. 458-62). Her clothing was also taken into custody. And, her cell phone was also looked at and photographed. (R. 265-66, Tr. pp. 454-55). Officer Edwards noticed at that point that Phillips had made cell phone calls prior to calling 911. (R. 265-66, Tr. pp. 454-55). According to Phillips' phone, she called her son Hunter at 7:29 p.m. and again at 7:29 p.m. The 911 call was made at 7:30 p.m. (R. 267-69, Tr. pp. 456-58).

Phillips then began making more inconsistent statements about what had occurred at Melvin's residence. She now claimed the perpetrator was a Puerto Rican or Hispanic. She

Phillips' black shirt contained her DNA as a major contributor and two (2) unknown minor contributors. Phillips' white shirt contained only her DNA. Her blue jeans contained her DNA as a major contributor and a partial unknown male DNA on her waistband. The DNA of the minor contributors in each of these samples was so small the expert could not say whether any of these samples were from the same person. Melvin's DNA was found in a blood stain at the crime scene next to his body. No DNA of evidentiary value could be obtained from the bank bag.

claimed the perpetrator pushed her face down in the mud and her hair must just be a ball of mud. Police noticed there was no mud on her face or in her hair at the scene or at the police station. The photographs taken of her by police also show there was no mud on her face or in her hair. (R. 232-33, 220-23, 294, Tr. pp. 421-22, 409-12, 487, See also State's Ex. 69 A – D, video of interview on February 4, 2010).

On the afternoon of February 5th, a sketch artist was brought in to draw a composite. Even though Phillips stated on the night of the crime that she saw the perpetrator, she could not give the sketch artist a sufficient description to draw a composite. At one point, she gave a description that the perpetrator had long curly type hair. On another occasion, she informed police the perpetrator had dreadlocks. At one point, she told the sketch artist that the perpetrator had brown eyes; and, a little while later she stated he had green eyes. Police were never able to develop a clear description of Phillips' *alleged* "perpetrator" or who to look for. (R. 218-23, 434-36, Tr. pp. 407-12, 627-29).¹⁰

During her questioning, Phillips repeatedly would change the subject when officers were trying to get a description of the perpetrator. She would begin talking about some unrelated subject. (R. 334, 336, Tr. pp. 527, 529).

Phillips also told investigators she had been to a *Bi Lo* grocery store in York immediately before "the crime" *allegedly* took place. Police obtained the surveillance video from the *Bi Lo* and discovered Phillips entered the *Bi Lo* at 6:15 p.m. and left the *Bi Lo* at 6:28 p.m. Phillips failed to tell police she had been to a nearby gas station before arriving at the *Bi Lo*. This was only discovered later by police when checking her story. The surveillance video from the gas station showed Phillips pumped and purchased gasoline at the York gas station at 6:05 p.m.

¹⁰ The investigation into Melvin's murder is still ongoing. Police are still attempting to determine who the other individual was who assisted Phillips' in Melvin's murder.

This put Phillips in York at or before 6:00 p.m. on the date of Melvin's murder. (State's Ex. 85, 86, 87, & 88, R. 445-56, Tr. pp. 641-52).

Police also discovered through surveillance video, when Phillips was at the *Bi Lo*, she had a black umbrella, but strangely after the murder, the black umbrella was nowhere to be found. A different umbrella was found in her car. (State's Ex. 85, 86, 87, & 88, R. 445-56, 99, Tr. pp. 641-52, 285).

Over the next several days and weeks, Phillips was interviewed by police in an attempt to develop an identity of the alleged "perpetrator." Phillips' version of events repeatedly changed, and her description of the robbery, with regard to her, became more violent, indicating she was attempting to gain sympathy as "a victim" and portray herself further as "a victim." Phillips claimed the perpetrator, after duct taping her, dragged her from her car to behind the brick wall by pulling her by her hair. At the police station the night of Melvin's murder, no hair was missing from Phillips' head. (R. 289-90, Tr. pp. 480-81).

On February 7th, Phillips was interviewed again. In this interview, she claimed a hood or cloth was put over her head before she was duct taped. (R. 300-05, Tr. pp. 493-98, See State's 70A & B)). She now claimed the perpetrator called her a "GD bitch." This was inconsistent with her first statements to law enforcement. (R. 306, Tr. p. 499). She also now claimed she hit her head on some bricks trying to get up off the ground the night of the crime. This was inconsistent with her earlier versions, and she had never previously claimed a head injury. (R. 306, Tr. p. 499). Officers also noticed she had no injuries to the bottom of her feet or her heels, even though she claimed she had been dragged backwards from her car to the brick wall and her shoes came off during this process. (R. 306-07, Tr. pp. 499-500). The driveway at Melvin's residence was concrete and the top layer was coming off, i.e. rough concrete. (R. 308, Tr. p.

501). On this occasion, Phillips also said her assailant had curly dark hair down to his shoulders. This was also inconsistent with an earlier description of his hair: (R. 309, Tr. p. 502).¹¹

On February 9th, Phillips contacted Officer Dale Edwards and told him she remembered now that about two (2) weeks earlier, she received some weird phone calls. She said in the phone calls she could hear Hispanic rap music in the background. She said she received three (3) of these phone calls. Edwards obtained her phone and had another officer attempt to locate the calls but no leads were developed as to any Hispanic voices or phone numbers. (R. 313-16, Tr. pp. 506-09).

On February 10th, Phillips agreed to a re-enactment of the murder which was videotaped by police. (State's Ex. 89). Several times during the re-enactment, Phillips appears to be crying. Detective Billy Mumaw, who was present, leaned in and noticed on none of these occasions was Phillips actually crying. There were no tears. (R. 459-60, Tr. pp. 655-56). Detective Mumaw also noticed that Phillips only pretended to cry when she was talking about what happened to her, not about Melvin's murder. (R. 460, Tr. p. 656). Detective Mumaw also noticed that in Phillips' version of what happened, after Phillips freed herself from the tape, she never went to check on Melvin, she went straight to her car. (R. 460, Tr. p. 656). And, Phillips claimed she did not call police immediately because she claimed she forgot the number to call 911. (R. 463, Tr. p. 659).

¹¹ In this interview, Phillips also made several slips of the tongue. She was asked what time she arrived home the night of Melvin's murder. She asked if the officer meant her house in Gaffney. The officer said no; he was referring to Melvin's house. Phillips then stated "the first (1st) time.." and then she placed her hand over her mouth before finishing her answer. Later, in the interview, Phillips is describing leaving the *Bi Lo* in York. She repeatedly states, approximately three (3) times, "we" left the *Bi Lo*. Phillips was supposed to be alone when she left the *Bi Lo* in York at 6:28 headed to Melvin's residence. (See State's 70A & B).

On February 12th, Phillips contacted Officer Edwards by phone. This phone call was recorded. She and her son Hunter spoke to Officer Edwards. In this phone call, Phillips gave Officer Edwards the name of some African-American possible persons of interest. She had previously described most recently that the perpetrator was Puerto Rican or Hispanic. (R. 322-24, Tr. pp. 515-17; State's Ex. 71A & B).¹²

On February 19th, Phillips was interviewed again, this time by SLED Agent Scott Williams. In this interview, she told Williams the perpetrator threatened to blow her head off if she didn't stay quiet. This was the first time she had ever given this version. She then stated she was not sure the accent was of a Hispanic male or if he had a speech impediment. She stated he had curly hair, like dreadlocks, coming down in front. She stated she believed he had a jacket because she heard a zipper sound. This contradicted earlier statements as well. She had not mentioned a speech impediment before or the dreadlocks, and she was now saying she never saw the jacket when in past interviews she had told police she saw the jacket, it was tan or khaki, or a sweat-suit type jacket. (R. 653-54, Tr. pp. 854-55). She even admitted she had told police before she had seen a tan jacket, but she now knew that was not possible because her eyes were taped shut.

In this interview she stated she *did* see Melvin's body after she got back to her car, turned on her lights, and moved her car. She even described where Melvin's body was located, and she knew where it was at after she started moving her car. (R. 656, Tr. p. 857). She also stated she used her car key to cut the tape, not loosen it. (R. 657, Tr. p. 858). She also stated she and

¹² Also, previously on February 5th, Phillips gave police the name of Deoprakash Persuad as a possible suspect. Police investigated this person, who was Indian [from India]. He was at work at *T.J. Max* at the time of the crime according to his employment records; his supervisor, and Mr. Persuad. Police ruled Persuad out as a suspect because he could not have committed the crime. (R. 442-44, Tr. pp. 638-40).

Roberts had been together for about 12 years during which *they never had any problems*. (R. 659, Tr. p. 860).

On March 5th, Phillips gave police the name of Marilyn Littlejohn as a possible suspect. Police followed up on that and it turned out to be nothing of substance. (R. 669, Tr. p. 870). She also advised police Melvin had a previous girlfriend, i.e. before she and Melvin became romantically involved. (R. 669, Tr. p. 870).

On March 22nd, Phillips told police that she was at a *Bi Lo* two (2) weeks prior and she heard the voice of her assailant in the store. She had no logical explanation why she did not contact police immediately. (R. 675-76, Tr. pp. 876-77). After investigators left her business in Gaffney, Phillips then called SLED Agent Williams and inquired of him whether one (1) of Melvin's two (2) sons could be involved in the murder. Melvin had no African-American or Hispanic sons. (R. 677, Tr. p. 878).

Ronnie Burgess, a former highway patrolman, testified that on the night of February 4, 2010, the night Melvin was murdered, Phillips' son Hunter called Burgess and told Burgess if he [Burgess] came and picked him [Hunter] up, Hunter would try and get Burgess' home computer working again. Burgess and Hunter both lived in Gaffney about a mile and a half apart. According to Burgess, it was around 6:45 p.m. when Hunter called Burgess, but Burgess was not looking at the clock. Burgess picked Hunter up and brought him back to Burgess' residence probably a little after 7:00 p.m. Hunter got on Burgess' computer and contacted AT&T using Burgess' portable house phone. Burgess believed Hunter was talking to an AT&T representative, when Hunter received a call on his cell phone and disengaged the call with AT&T. After the cell phone call, which according to Burgess lasted seven (7) or eight (8) minutes, Hunter asked Burgess to take him to York right then. Hunter claimed his mother had

been assaulted. Burgess testified he left his house taking Hunter to York, when Burgess' wife called and told Burgess to come back because he had mistakenly taken her phone with him. At that point, Hunter made Burgess aware that he had a pistol in his pocket, and he needed to put the gun in his [Hunter's] house. (R. 366-384, Tr. pp. 559-77).

Burgess did not take Hunter home, but gave the pistol to his wife. Burgess testified he did not know Hunter had a gun on him when he was in his house working on his computer. Hunter had the gun secreted in his coat pocket. Burgess testified Hunter was wearing a long trench coat. He also testified Hunter was wearing dark blue jeans, a brown sweater, and black dress shoes. Burgess testified he had seen Hunter on previous occasions, and Hunter was dressed differently than he had ever seen him in the past. Hunter usually wore tore up pants and casual wear. Burgess had never seen Hunter dressed up like he was that night. (R. 366-384, Tr. pp. 559-77).

Burgess' wife laid the gun on their kitchen counter when Burgess returned to his residence and gave the gun to her. The gun Hunter had was a short barrel, blue steel, revolver. Burgess testified he then carried Hunter to York, and the weather was really bad, it was raining hard and mixed with sleet. He testified Hunter stayed on the phone while he was driving him to York. Burgess believed Hunter was talking to his mother on the phone. (R. 366-384, Tr. pp. 559-77)

Hunter directed Burgess to Melvin Roberts' residence because Burgess did not know where Melvin lived. Once there, they learned Phillips was at the York police station, so the two (2) men went there. When Phillips was released by police about 3:00 a.m., Phillips rode back to Gaffney with Burgess and Hunter. Phillips was talking about how Melvin was killed, and Burgess said she was calm throughout the explanation of what happened. She was not crying or

hysterical. At Phillips' request, Burgess stopped at a *BiLo* in Gaffney to get Phillips some Mike's hard lemonade. She then asked Burgess to stop at her dress shop in downtown Gaffney presumably to pick up some more hard lemonade. After stopping at Phillips' store, Burgess then drove to his home and returned the revolver to Hunter, Phillips' son. Burgess then took Phillips and Hunter to their residence in Gaffney. Burgess testified Phillips later came by his residence and talked to his wife. (R. 366-384, Tr. pp. 559-77).

During the night/early morning hours of February 5th, Hunter called an employee of Phillips, Angela Durham, and asked her to come and clean his house. This was the same house at which Burgess had dropped Hunter and Phillips off. Durham did so. (R. 416-17, Tr. pp. 609-10).

Police recovered a .38 caliber snub nose pistol from Phillips' residence in Gaffney at which her son Hunter lived. The pistol was a revolver. (R. 673-74, Tr. pp. 874-75).¹³

Friends of Phillips testified that after Melvin's murder when they saw Phillips she did not seem upset at all about Melvin's death. One friend testified Phillips pretended to be crying but it was a put on, "she never put any tears out." (R. 626, Tr. p. 827, ll. 1-6). Another witness testified Phillips appeared to be happy at the visitation for Melvin's body; it appeared as if it was a party to her. (R. 624, Tr. p. 825).

¹³ Because the bullet that passed through Melvin's coat and shirt struck the patio and shattered into numerous pieces, there were not sufficient identifying marks on the recovered bullet fragments and jacket portions to directly link this .38 snub nose revolver to Melvin's murder. However, this gun could not be ruled out as the murder weapon. This gun could have fired the bullet that went through Melvin's coat jacket and shirt collar. The firearm's examiner also testified the fired bullet was most probably not a .22 caliber bullet, i.e. not fired by a .22 caliber pistol, because it did contain a bullet jacket. (R. 697-704, Tr. pp. 898-905). The State's gun primer residue expert also testified the bullet hole to Melvin's jacket and shirt was not made with a .22 caliber pistol. Phillips told police that when she heard the gunshot on the night of Melvin's murder, it was a small pop, and did not sound like a large caliber weapon. (R. 335, Tr. p. 528).

On the night of Melvin's murder, and even later, Phillips was asked by police about the status of her relationship with Melvin. She informed police they were romantically involved and had been so for approximately 12 years. She claimed all of her clothes were at Melvin's residence where she lived and had lived for the past 11 years. She informed police that she and Melvin got along fine and there were no problems in the relationship. She told police the only thing they argued about was her driving, and that was in a humorous type way. She also claimed Melvin got along fine with her son Hunter. She also told police again on a later date that she and Melvin had been together for 12 years *and* they had never had any problems. They had never had any big arguments. And, she could not remember the last argument that they had. (R. 271-72, Tr. pp. 460-61; State's Ex. State's 69 (CD's A-D) Interview of February 4, 2010; R. 659-60, Tr. p. 860, ll. 2-4 & p. 861, ll. 21-23).

The police investigation, however, revealed the truth about the relationship. Melvin and Phillips were not getting along; they argued often; and, the relationship was coming to an end. Phillips had lied to police about her relationship with Melvin. (R. 391-92, 407-08, 414-15, 573-75, 619-23, Tr. pp. 584-85, 600-601, 607-08, 772-74, 820-24).

Melvin and Phillips had been involved in a romantic relationship for over 10 years. Over the years, Melvin would take Phillips with him to S.C. Bar Association functions. Melvin also took Phillips on cruises. Melvin also took her to various dinners and functions sponsored by a club Melvin was in. Melvin also took her to the Flat Rock Playhouse regularly, where Melvin had season tickets. Melvin would pay all of the bills for these trips or functions. Melvin also owned a beach house, and he and Phillips would go there together. (R. 390-91, Tr. pp. 583-84). Phillips also lived in Melvin's house in York during almost all of this 10 year period. All of this

was coming to an end at the time of Melvin's murder. (R. 391-92, 407-08, 414-15, 573-75, 619-23, Tr. pp. 584-85, 600-601, 607-08, 772-74, 820-24).

Melvin and Phillips were not married, but during most of the relationship Melvin provided all of Phillips' necessities including food, cars, gas, etc. and paid Phillips' bills. (R. 559-60, 621, 523, Tr. pp. 758-59, 822, ll. 13-17, 722). Melvin was almost eighty (80) years old, and Phillips was approximately age sixty-seven (67) at the time of Melvin's murder.

Melvin owned several businesses, including a women's boutique, *Julia's Inc.*, [hereinafter "the dress shop"] that Phillips was running at the time of Melvin's murder. The dress shop was located in downtown Gaffney. Originally, it was a *Merle Norman* franchise, and Phillips would bring the money from the store to Melvin's law office or give it to Melvin, who would in turn give it to his office manager in York. The store itself belonged to Melvin. The *Merle Norman* franchise was in Melvin's name, and he was responsible for it. He was president of the corporation, *Julia's Inc.*, in charge of disbursing all the money and paying all the bills regarding the store, and also paying for the inventory and the operating expenses of the store. Phillips was essentially the store manager. (R. 385-89, Tr. pp. 578-82).

Melvin also paid for Phillips' health insurance and her drug plan. He also paid for her utilities at her house in Gaffney at which Hunter lived. He paid for her cell phone bill for some time. He also paid for her Citgo gas card. He paid for her dental bills and extraneous medical expenses. He also provided her a vehicle of her choice, and put the vehicle in her name, and paid the tax on the vehicle and paid the cost of registration and car insurance. (R. 389-90, Tr. pp. 582-583).

Melvin started cutting Phillips' financial support off in early 2009, about a year before his murder. Melvin discovered *Julia's Inc.*, was losing substantial amounts of money. Melvin

was informed by his bookkeeper the business had cost him \$60,000 out of his own pocket for that year alone. Melvin wrote letters to all creditors of *Julia's Inc.*, notifying them he was disassociating himself from the business, and he would no longer be responsible for any bills for that business, but Phillips would be. *Julia's Inc.* lost the franchise with *Merle Norman*. Melvin gave Phillips \$10,000, obtained from the return of the *Merle Norman* inventory, with which she was supposed to operate the dress shop thereafter. At the time of Melvin's murder, only \$500.00 of this \$10,000 remained. (R. 410-11, Tr. pp. 603-04).

As a result of losing the franchise, Phillips converted the store into a consignment shop, but the shop no longer brought in very much money at all. Phillips would have to share the money she made off of the consignment goods with the person who brought the clothes into the store. Additionally, instead of selling \$500.00 rain coats, she was now selling \$2.00 blue jeans. (R. 411-12, 575, Tr. pp. 604-05, 774).

Melvin stopped paying for Phillips' medication in the middle of 2009. Phillips received a small monthly paycheck for operating the dress shop, which she used to pay for her medication. Melvin also stopped paying for Phillips' purchase of pain killers, of which she was addicted. As the date of Melvin's murder approached, Melvin also stopped paying Phillips' bills and took her credit cards away from her. Melvin would follow Phillips to the gas station and put gas in Phillips' car. (R. 559, 618, 621, Tr. pp. 758, 819, 822).

Contrary to what Phillips told police the night of Melvin's murder, witnesses testified that the relationship between Melvin and Phillips was not a happy one as it approached the date of Melvin's murder. Several witnesses testified the couple argued loudly. One (1) witness testified they argued a lot. Melvin had also banned Phillips' son, Hunter, from the dress shop, and shortly before his murder, when Melvin caught the son in the dress shop, Melvin and Phillips argued

violently. Melvin and Phillips also argued about the dress shop. Melvin wanted to close the store, and Phillips did not want to close the store. At the end of 2009, Melvin and Phillips were not getting along at all. (R. 391, 407-08, 573-74, 619-22, Tr. pp. 584, 600-601, 772-73, 820-23).

Phillips told one (1) friend that Melvin had “cut her off” or was through supporting her, because he found out she was stealing money from him. Phillips was supposed to be using the money Melvin gave her to buy clothes for the dress shop at wholesale in Atlanta; but, instead Phillips was buying pain pills from a drug dealer in Gaffney named Johnny Smith and buying very little inventory for the store. Phillips was also refusing to accept credit cards for purchases at the dress shop, placing an out of order sign on the credit card machine, and accepting only cash from customers even though the credit card machine was in working order. Phillips was also taking cash out of the cash register and giving it to her son Hunter or buying things for herself. In essence, Melvin discovered Phillips was embezzling money from the business, Melvin’s business, for her own use. When Melvin found out he cut Phillips off. (R. 560, 573-75, 622, 623, Tr. pp. 759, 772-74, 823, ll. 23-25, 824).

Phillips was obtaining pain medication at a drug store in Gaffney. She was also obtaining pain medication [Oxycontin, Lortab, & Xanax] on the black market. When she purchased the pain medication, she would split the pills with her son, Hunter, the same one who Melvin had banned from the dress shop. A witness who worked at the dress shop, Angela Durham, also saw Phillips’ son [Hunter] go behind the dress shop and purchase pills, and when he returned he and Phillips split the pills. Durham testified this occurred regularly leading up to Melvin’s murder. A ledger Phillips kept also showed she was purchasing pills and sharing or distributing them to others. (R. 547-51, 415-16, 418, 571-72, Tr. pp. 746-50, 608-09, 611, 770-71).¹⁴

14 At the time of Melvin’s murder, Phillips’ out of pocket expenses for *prescription* drugs from

Shortly before Melvin's murder, Phillips had to borrow \$200 from a part time employee who worked at the dress shop. Phillips could not repay the employee even though the employee needed the money to pay her power bill. Phillips also borrowed \$200 from a friend shortly after Melvin's murder. She could not pay this cash back either; she paid it back with inventory from the dress shop. (R. 415, 625, Tr. pp. 608, 826).

Phillips' personal checking account at Wachovia Bank showed that in the weeks and months leading up to Melvin's murder, she had either overdrawn her checking account or had just a few dollars *or* cents in her account. She also owed the bank approximately \$1,500 on a line of credit that protected her checking account from overdrafts. (R. 542-46, Tr. pp. 741-45).

A co-worker of Phillips overheard Phillips talking to her son Hunter before Melvin's murder. The two would be talking about the fact that Phillips and Melvin were not getting along well. She heard Phillips state that she believed Melvin was seeing another woman. However, even though Melvin was seeing another woman, Phillips stated she wasn't going anywhere, i.e. moving out of Melvin's house in York. (R. 414, Tr. pp. 607, ll. 14-23). The same co-worker overheard Phillips tell Hunter that Melvin took her credit cards away. She heard Phillips tell Hunter that Melvin followed her to the gas station to put gas in the car. She also heard her discuss with Hunter the fact that Melvin wanted to close the dress shop, but she did not. These conversations occurred at the end of 2009 or shortly before Melvin's murder in February of 2010. (R. 413, 414, Tr. pp. 606, ll. 5-21, 607).

Phillips confided in a friend that "Melvin had stopped giving her money. He wasn't paying her bills anymore and that he was not having anything to do with her. He wouldn't even touch her." (R. 622, Tr. p. 823, ll. 7-10).

the drug store alone was roughly \$300.00 a month. (R. 547-52, Tr. pp. 746-51).

At the time of Melvin's murder, Melvin and Phillips were no longer intimate sexually. Phillips admitted the same to a friend before the murder and that she now had no way to manipulate or get back in Melvin's "good graces" as she had done in the past. Phillips related to the friend that in the past that she had used sex to get back in Melvin's favor when Melvin was angry with her. This friend testified that the last time she saw Melvin and Phillips together, a couple of weeks before Melvin's murder, it was clear the relationship between Melvin and Phillips was very strained or tense. (R. 619-20, 623, Tr. pp. 820-21, 24).

As previously stated, Melvin also owned the building in which the dress shop was located. If Melvin died, Phillips was to inherit the building in Gaffney, which had been purchased several years before for \$150,000, and Phillips would also receive a car of her choice. (R. 552-64, 665, Tr. pp. 751-63, 866). Phillips was aware of this fact.¹⁵ Phillips believed if Melvin died for any reason she would be "well taken care of and she would be taken care of for the rest of her life [by Melvin]." She would inherit the store, and "...she could live the way she was living. She wouldn't lack for anything." (R. 621, Tr. p. 822, ll. 1-12). Additionally, Melvin owned even more property, including numerous rental properties, Phillips might be entitled to if she could establish a common law marriage, i.e. obtain a distributive share from his estate. (R. 564-66, 643-44, Tr. pp. 763-65, 844-45)

Several weeks before Melvin's murder, Phillips approached a friend, Guy Blankenship, who owned a business [a restaurant and antique shop] across the street from the dress shop in Gaffney. Phillips and Blankenship had known each other for about ten (10) years. Phillips and Blankenship opened their respective businesses at approximately the same time. Blankenship

¹⁵ Phillips also believed she was entitled to inherit under Melvin's will. She stated to SLED Agent Scott Williams during one (1) of her last interviews regarding her inheriting under Melvin's will: "when you lay down your life for a man, and you see what you get." (R. 665, Tr. p. 866).

also knew Melvin, but not well. Phillips had shared with Blankenship or others in Blankenship's presence her troubles with Melvin. Phillips asked Blankenship if he knew anyone that could be hired to commit a murder. Phillips told Blankenship she needed someone to kill Melvin. (R. 589-614, Tr. pp. 788-813).

Blankenship testified the way this conversation came about was Blankenship was telling Phillips what had happened to the boyfriend of a young lady Blankenship allowed to stay in an apartment over Blankenship's restaurant. The boyfriend had gone to Virginia with two (2) friends and found his girlfriend in bed with her ex-boyfriend. The boyfriend and the two (2) friends beat the man to death, and *duct taped* the girlfriend with *duct tape*, cut her throat, and left her there. The three (3) men then left the crime scene in Virginia. The girlfriend survived the assault, was somehow able to free herself from *the duct tape*, and escaped the home. The boyfriend and his two (2) friends who committed the murder and attempted murder were still on the run from police in Virginia. Blankenship related this entire story to Phillips before Melvin's murder. (R. 589-614, Tr. pp. 788-813).

Blankenship testified Phillips began asking Blankenship if there was any way to contact the man who had killed the man in Virginia. Phillips wanted to know if the man would commit a murder for hire. Blankenship also testified Phillips approached another young man who Blankenship allowed to live over the restaurant. This young man was addicted to crack cocaine and as a result was involved in other criminal activities. Blankenship testified he overheard Phillips ask this young man more than once if he would kill Melvin Roberts for money. The young man declined. Blankenship testified Phillips inquired of other associates of his whether they would commit a murder for hire. Blankenship testified Phillips also inquired of him whether he would murder Melvin for money, and Blankenship declined. Blankenship testified

he was offered \$10,000 by Phillips to murder Melvin. Blankenship also testified Phillips tried to blackmail him with something illegal he had done with Phillips, prior to Melvin's murder, in order to get him [Blankenship] to assist in the murder of Melvin Roberts. (R. 589-614, Tr. pp. 788-813).

Blankenship testified he was so concerned about Phillips' inquiries he told the Mayor of Gaffney, Henry Jolly, who was a good friend, about Phillips trying to hire someone to kill Melvin. Blankenship also told Detective Chris Skinner of the Gaffney Police Department about Phillips' attempts to hire someone to kill Melvin before Melvin was murdered. Blankenship testified he told Skinner that when Melvin is killed I want you to know, "I had nothing to do with it." Blankenship testified he was in Virginia when Melvin was murdered and was notified by Mayor Jolly that he needed to return to South Carolina because he needed to tell authorities what he knew. Blankenship returned to Gaffney and informed police in York and a SLED Agent what had occurred before Melvin's death. (R. 589-614, 635, Tr. pp. 788-813, 836).

Blankenship testified that before the trial he had been contacted by a friend of Phillips, by phone, threatening him not to testify. Specifically, he was threatened that something he and Phillips had done that was illegal [not this murder] would be exposed if he testified against Phillips. Blankenship ignored the threats and testified anyway. Blankenship, cooperating with police, also wore an undercover wire and entered a drug dealer's home in Gaffney in an attempt to find out who else was involved in Roberts' murder beside Phillips. (R. 589-614, Tr. pp. 788-813).

Although Phillips claimed to have been behind the wall when Melvin was shot, some sixty (60) feet away, a SLED gunshot residue expert found several round lead particles, a component of gunshot residue, on a black sweater vest she was wearing. These were found on

the chest portion of the sweater and on one (1) sleeve. On the white blouse she was wearing under the sweater vest, actual gunshot residue was found on both the right and left sleeve, and particles consistent with compressed gunshot residue were found on both of the cuffs of the blouse, including on the underside of one (1) cuff. Phillips told police she was not near the gun when it was fired. She also told police the perpetrator never returned to her after she heard the gunshot on the other side of the brick wall. She also informed police she had not fired a weapon in 4 or 5 years; and, the blouse and vest she was wearing on the night of Melvin's murder had been recently dry cleaned. The State's gunshot residue expert testified given the gunshot residue found on Phillips' clothing and the round lead particles, it was more probable that Phillips was within 8 to 10 feet of the weapon when Melvin was shot, not 60 feet away as she claimed. (R. 100, 210-13, 477-83, 533-34, 670-71, 730-758, 764-65, Tr. pp. 286, 399-402, 674-80, 732-33, 871-74, 932-60, 966-67).¹⁶

¹⁶ Phillips also admitted to police that she knew how to shoot a gun, because a friend of Melvin's had taught her how to use a gun 4 or 5 years before. According to Phillips, that was the last time she fired a gun. (R. 478-80, Tr. pp. 675-77).

ARGUMENT

There was more than sufficient evidence to overcome the motions for a directed verdict.

The Allegations of the Indictment

Phillips was indicted by the York County grand jury for the crime of murder, specifically Melvin Roberts' murder. The indictment, which was read to the jury at the beginning of the trial, states as follows:

On or about February 4, 2010, she [Julia Bright Phillips] did while acting as an accomplice with an unknown principal person, did unlawfully and with malice aforethought, kill Melvin L. Roberts by means of strangulation and he died as a proximate result of those acts.

(R. 956, Tr. p. 177, Indictment). The trial took place from August 26th through September 5th, 2013 before Judge Cole. Testimony and evidence was introduced by the State in their case in chief. And, testimony and exhibits were introduced by Phillips in the defense case.

What Occurred Below

At the close of the State's case, Phillips moved for a directed verdict of acquittal.

MR. FREDRICK: Judge, we move for a directed verdict for failure to present sufficient evidence and the judge the standard is not any evidence whatsoever, it is sufficient evidence, and the only evidence in six days that I have seen is gunshot residue testimony and Guy Blankenship. Judge, Guy Blankenship's testimony if we believe it, if we believe his testimony he doesn't say he's the one that killed Melvin. He doesn't say there is any connection to Melvin's murder. If we believe his testimony he says that she asked him to kill Melvin and then he did nothing. He didn't go kill Melvin. He didn't make any other connection to the actual event. If you believe that testimony, it doesn't quite make the connection.

Judge, the gunshot residue testimony, one particle in two places, on her shirt sleeves was the testimony. And it could have come from many different locations. Those taken alone I don't think are sufficient to survive a directed verdict, judge.

(R. 765-66, Tr. pp. 967-68). The State responded as follows:

MR. WATTS: Thank you, Your Honor. May it please the Court. The State would submit, Your Honor, that it is not sufficient evidence that we need, just substantial evidence whether it be circumstantial or direct testimony. Taken in the light most favorable to the State the jury can conclude beyond a reasonable doubt that this

defendant participated either actively or as an accomplice and we've shown approximately 12 different statements from this defendant in which she is inconsistent about the description of the attacker, the description of the attacker's clothing, what he says, his voice and dialect, her actions outside of the car behind the wall, the manner and method of duct tape application and the volume that she actually had. Her clothing, the mud that she claims that should be on it that we don't see, the degree of wetness of the clothing. On top of the fact, Your Honor, that we presented sufficient evidence and substantial evidence that the gunshot residue comes within ten feet of the actual scene of the crime and I didn't mean the scene of the crime being Mr. Melvin Roberts's house, I mean actually within ten feet of where his body was actually laying, which directly contradicts where she is. No matter how minute the amount the jury can still conclude beyond a reasonable doubt that it came from the discharge of a gun. I think we effectively shut down any transfer. They heard multiple theories about how transfer would be applicable in this case, Your honor, and finally I think they can conclude that she intended to murder Mr. Roberts as evidence by the fact that she had substantial motive to gain from the homicide of Mr. Roberts.

THE COURT: Anything further?

MR. FREDRICK: No, sir.

Judge Cole ruled as follows:

THE COURT: All right. Well, considering the evidence in the light most favorable to the State as I must do on a motion for directed verdict, I do find that there is sufficient substantial circumstantial evidence that if found to be credible and believable by the jury could establish the defendant's participation in this crime of murder as an accomplice or as a principal depending upon how they view the evidence and the inferences that they might derive from that evidence.

So, based upon that analysis I do find that the defendant's motion for a directed verdict should be and therefore is denied.

(R. 768, Tr. p. 970, ll. 4-16).

At the close of the defense case, Phillips renewed her motion for a directed verdict.

THE COURT: All right. Any motions or other matter to address?

MR. FREDRICK: Judge, we renew our motion for a directed verdict on the same grounds, but in addition based on the testimony we just heard. For several agencies including the FBI, the U.S. Army Crime Lab, what was testified to as far as the levels of GSR found in this case; one particle on each sleeve, don't even meet the threshold to call it GSR. The results at best are inconclusive and we renew our motion for a directed verdict.

THE COURT: All right. Does the State wish to be heard?

MR. WATTS: Briefly, Your Honor. We don't believe anything has changed since the people put in their case. Couple fact witnesses did not break Julia quite frankly his expert in GSR testified that although it didn't meet FBI and army it did meet the ASCLD standards for reporting and there was barium, antimony and lead and GSR present on the defendant.

THE COURT: All right. Well, nothing in my view has changed as far as granting or denial of the motion and so for the same reason given at the close of the State's case the motion for a directed verdict is denied.

MR. FREDRICK: Thank you, judge.

(R. 843-44, Tr. pp. 1053-1054). Phillips now argues Judge Cole erred in denying her motions for a directed verdict. (BOA). Phillips is wrong.

Standard of Review / Directed Verdict
(Appellate)

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).¹⁷ In reviewing a denial of a directed verdict, this Court must view the evidence in the light most favorable to the State. State v. Larmand, 2015 W.L. 4751033 (2015); State v. Cope, 405 S.C. 317, 748 S.E.2d 194 (2013); State v. Rogers, 405 S.C. 554, 748 S.E.2d 265 (Ct. App. 2013). This Court views the evidence *and all reasonable inferences* in the light most favorable to the State. Larmand, *supra*; State v. Thompson, 413 S.C. 90, 776 S.E.2d 413 (Ct. App. 2015); State v. Harry, 413 S.C. 534, 776 S.E.2d 387 (Ct. App. 2015); State v. Lemire, 406 S.C. 558, 753 S.E.2d 247 (Ct. App. 2013), *citing* State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006).¹⁸ 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, 495 (2013); State v. Gilliland, 402 S.C. 389, 741 S.E.2d 521, *3 (Ct. App. 2012). If there is any direct evidence, or if there is substantial circumstantial evidence, that reasonably tends to prove the defendant's guilt, this Court must find the trial court properly submitted the case to the jury.

¹⁷ See also State v. Tyner, 258 S.E. 2d 559 (1979); State v. Irvin, 270 S.C. 539, 243 S.E.2d 195 (1978).

¹⁸ See also State v. Palmer, 408 S.C. 218, 758 S.E.2d 195 (Ct. App. 2014), *affirmed in part reversed in part*, 413 S.C. 410, 776 S.E.2d 558 (2015).

State v. Lynch, 412 S.C. 156, 771 S.E.2d 346 (Ct. App. 2015); State v. Harry, 413 S.C. 534, 776 S.E.2d 387; State v. Rogers 405 S.C. 554, 748 S.E.2d 265 (Ct. App. 2013), *citing* State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011).

This Court considers only the existence or non-existence of evidence, not witness credibility, in reviewing the denial of a directed verdict. Rogers *supra*, n. 5, 748 S.E.2d 265, n. 5;¹⁹ State v. Stuckey, 347 S.C. 484, 499 n. 7, 556 S.E.2d 403, 411 n. 7 (Ct. App. 2001)(in reviewing a denial of a directed verdict motion, “witness credibility is not a proper inquiry for our consideration.”) *citing* State v. Fennell, 340 S.C. 266, 531 S.E.2d 512 (2000), *and* State v. Scott, 330 S.C. 125, 497 S.E.2d 735 (Ct. App. 1998). In Scott, this Court pointed out that on appeal from the denial of a directed verdict, issues of witness credibility are solely for the jury, not the appellate court. 330 S.C. at 131, n. 4, 497 S.E.2d at 738 n. 4. Our appellate 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 fact finder. Rogers *supra*.²⁰ 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. Lynch, 412 S.C. at 171; State v. Hepburn, 406 S.C. 416, 753 S.E.2d 402 (2013).²¹

19 See State v. Cherry, 348 S.C. 281, 286, 559 S.E.2d 297, 299 (Ct. App. 2001)(en banc), *aff’d in result*, 361 S.C. at 594, 606 S.E.2d at 478; State v. Scott, 330 S.C. 125, 131, n. 4, 497 S.E.2d 735, 738, n. 4 (Ct. App. 1998).

20 See State v. Frazier, 386 S.C. 526, 532-33, 689 S.E.2d 610,613-14 (2010)(viewing circumstantial evidence “collectively” and “as a whole” to hold directed verdict properly denied); Cherry, 361 S.C. at 595, 606 S.E.2d at 478 (finding 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).

21 Furthermore, 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,

“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. Zeigler, 364 S.C. 94, 103, 610 S.E.2d 859, 863 (Ct. App. 2005)(citing State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002)); State v. Stanley, 365 S.C. 24, 42, 615 S.E.2d 455, 464 (Ct. App. 2005). On appeal, this Court is limited to determining whether the trial judge abused his discretion. State v. Reed, 332 S.C. 35, 43, 503 S.E.2d 747, 751 (1998); State v. Douglas, 367 S.C. 498, 506, 626 S.E.2d 59, 63 (Ct. App. 2006). An abuse of discretion occurs when a ruling is based on an error of law or a factual conclusion that is without evidentiary support. State v. Moore, 374 S.C. 468, 474, 649 S.E.2d 84, 86 (Ct. App. 2007).

Trial Court’s Standard

When ruling on a directed verdict motion, the trial court is concerned with the existence or nonexistence of evidence, not its weight. Cope, 405 S.C. 317, 748 S.E.2d 194; Cherry, 361 S.C. at 593, 606 S.E.2d at 477-78.²² “Any concerns about contradictory statements by the accuser, whether on the stand or outside the courtroom setting, were ultimately about his credibility and therefore in the domain of the jury.” State v. Nicholson, 366 S.C. 568, 623 S.E.2d 100 (Ct. App. 2005)(rejecting credibility as a factor in ruling on a motion for a directed verdict). *See also* State v. Buckmon, 347 S.C. 324 n. 6, 555 S.E.2d 402, 406, n. 6 (2001) (mentioning whether a witness was credible goes to the weight of the evidence and is therefore not considered by the trial court when it considers a directed verdict motion); State v. Crawford, 362 S.C. 627, 634, 608 S.E.2d 886, 890 (Ct. App. 2005)(noting that a contradiction between a witness’s “sworn statement to police and his later testimony in court is a matter of weight for the jury to decide.”).

adopting State v. Harry, 321 S.C. 273, 468 S.E.2d 76 (Ct. App. 1996); *Cf.* State v. Thompkins, 220 S.C. 523, 68 S.E.2d 465 (1951)(citation omitted).

²² *See also* State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002); *see* Rule 19(a), SCRCrP.

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.

On the other hand, “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; Harry, 413 S.C. 534, 776 S.E.2d 387.²³ Rather, our Supreme Court has “rejected the contention that in ruling on a directed verdict motion, the trial judge must grant a directed verdict unless the circumstantial evidence pointed conclusively to the defendant’s guilt, to the exclusion of every other reasonable hypothesis.” Cherry, 361 S.C. at 594, 606 S.E.2d at 478. 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 her guilt may be fairly and logically deduced. Hepburn, 406 S.C. at 429, 753 S.E.2d 402, *quoting* State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126, 127 (2000).²⁴

The Lack of Merit of Phillips’ Argument

The State more than satisfied the standard to overcome the motion(s) for a directed verdict on the charge of murder. Rogers, *supra*. Judge Cole appropriately denied the motion(s) for a directed verdict. Hepburn; State v. Williams, 303 S.C. 274, 400 S.E.2d 131 (1991) (affirming denial of directed verdict where victim was employed by and last seen with the defendant and victim’s decomposed body was found 7 ½ months later); State v. Frazier, 386 S.C.

²³ See Cherry, 361 S.C. at 594, 606 S.E.2d at 478 (emphasis removed).

²⁴ If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the case must be submitted to the jury. State v. Freiburger, 366 S.C. 125, 620 S.E.2d 737 (2005); Weston, 367 S.C. at 292, 625 S.E.2d at 648.

526, 689 S.E.2d 610 (2010)(affirming denial of directed verdict where evidence placed defendant in the area of the murder at the time of the murder and defendant had motive to kill victim as he was having affair with victim's wife and made false statements to police during the investigation).

Murder

Murder is the unlawful killing of another with malice aforethought, either express or implied. S.C. Code Ann. Section 16-3-10 (2003). First, there is no question in this case and the State proved beyond any doubt that the victim Melvin Roberts was murdered. He was beaten with a blunt object, shot at, and strangled with a zip tie on his own patio. There was no evidence in this case reducing the crime from murder to voluntary or involuntary manslaughter. The issue before the jury was whether Phillips was guilty of Melvin's murder as a principal or accomplice. The State proved that she was.

Malice

In a criminal case, where the defendant is charged with murder, the State must establish every element of the offense, including producing evidence of malice. S.C. Code Ann. Section 16-3-10 (2003); *See State v. Maxey*, 262 S.C. 504, 205 S.E.2d 841 (1974). Proof of malice may take two (2) forms: (1) express malice or (2) implied or inferred malice. S.C. Code Ann. Section 16-3-10 (2003). Express malice is when the defendant expresses her hostility toward the victim prior to or at the time of the crime. *See Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992)(jury instruction was harmless where eyewitnesses established express malice and circumstances of killing established implied malice); *Blakely v. State*, 360 S.C. 636, 639, 602 S.E.2d 758, 759 (2004)(evidence of prior threats by the defendant against the victim are

admissible to show malice). Implied or inferred malice is when the circumstances of the crime give rise to an inference that malice existed in the defendant's heart or mind.

"In law, malice is a term of art, importing wickedness and excluding a just cause or excuse." State v. Doig, 31 S.C.L. (2 Rich) 179, 182 (1845). Malice "is a wicked condition of the heart, it is a wicked purpose, it is a performed purpose to do a wrongful act without sufficient legal provocation..." State v. Gallman, 79 S.C. 229, 238, 60 S.E. 682, 686 (1908). The South Carolina Supreme Court has defined malice as "the doing of a wrongful act intentionally without just cause or excuse." State v. Bell, 305 S.C. 11, 19, 406 S.E.2d 165, 170 (1991), *citing* State v. Judge, 208 S.C. 497, 38 S.E.2d 715 (1946). The Court has also defined malice as "the wrongful intent to injure another and indicates a wicked and depraved spirit intent on doing wrong." State v. Kelsey, 331 S.C. 50, 62, 502 S.E.2d 63, 69 (1998)(citations omitted). *See* Tate v. State, 351 S.C. 418, 426, 570 S.E.2d 522, 527 (2002)(malice is the wrongful intent to injure another); State v. Johnson, 291 S.C. 127, 128, 352 S.E.2d 480, 481 (1987)(malice is the wrongful intent to injure another); State v. Wilds, 355 S.C. 269, 276, 584 S.E.2d 138, 141-42 (Ct. App. 2003)(same). Further, malice may be inferred from the use of a deadly weapon. State v. Bennett, 328 S.C. 251, 260-63, 493 S.E.2d 845, 850-51 (1997); State v. Davis, 309 S.C. 326, 422 S.E.2d 133 (1992), *overruled on other grounds by* Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999); *see* State v. McLemore, 310 S.C. 91, 425 S.E.2d 752 (Ct. App. 1992).

The Evidence of Malice

At trial, the State established Phillips' malice toward the victim Melvin Roberts. She intentionally sought to hire several different individuals to murder Melvin Roberts shortly before his murder. *See* Blakely v. State, 360 S.C. 636, 639, 602 S.E.2d 758, 759 (2004)(evidence of prior threats by the defendant against the victim are admissible to show malice); State v. Fields,

264 S.C. 260, 267, 214 S.E.2d 320, 322 (1974)(defendant's statement to the deceased constituted evidence of malice). There can be no stronger evidence of malice toward a victim than repeated attempts to hire someone to murder the victim. Further, Melvin was beaten, shot and strangled. *See State v. Gray*, 408 S.C. 601, 759 S.E.2d 160 (Ct. App. 2014)(photographs of brain injury were admissible because they showed the force of the blow necessary to cause the injury to the brain and were relevant and probative of whether the defendant acted with malice. This was sufficient evidence of malice, both express and implied, to overcome the motion for a directed verdict). The State proved malice.

Motive

The State established Phillips had the motive to murder Melvin Roberts. *State v. Bratschi*, 413 S.C. 971, 775 S.E.2d 39 (Ct. App. 2015). Melvin and Phillips had been involved in a long term romantic relationship lasting over ten (10) years. The evidence established Melvin paid all of Phillips' bills and expenses during the relationship and paid for extravagant trips and vacations. Starting in early 2009, Melvin began cutting off his financial support to Phillips. This continued during the year of 2009, when Roberts stopped paying for Phillips' medications. Shortly before Melvin's murder, Melvin had cut Phillips completely off after learning she was stealing money from him; he was no longer paying her bills; she had a serious drug addiction problem which she could not afford; she was basically bankrupt, and she stood to inherit a substantial sum if Melvin died. Phillips had told one (1) individual if Melvin died she would be well taken care of. The testimony established the relationship was ending, and Melvin would not even touch Phillips shortly before his murder, and Phillips believed Melvin was seeing another woman. The State also established her motive carried forward into action. Phillips attempted to solicit several different individuals to murder Melvin shortly before his murder including

attempting to blackmail one (1) friend in her desperate attempt to kill Melvin and profit financially. See State v. Odems, 395 S.C. 582, 587, 720 S.E.2d 48, 50 (2011)(noting that in Bostick “the State never introduced a motive ... into evidence”); See also State v. Braxton, 343 S.C. 629, 636, 541 S.E.2d 833, 837 (2001)(“prior disputes between the victim and defendant may be relevant to establish the accused’s motive for committing the crime and motive may have bearing on the identity of the accused as the perpetrator of the crime.”); State v. Williams, 321 S.C. 327, 339, 468 S.E.2d 626, 633 (1996)(affirming denial of defendant’s directed verdict motion when “circumstantial evidence existed from which the jury could conclude that [the defendant] had the motive, means, and opportunity to perform the homicides”); State v. Thomas, 159 S.C. 76, 80-81, 156 S.E. 169, 171 (1930)(“The rule that evidence tending to show motive or absence of motive on the part of the accused is relevant and admissible, and that a wide latitude in the admission of this kind of evidence is permissive, are particularly applicable *** in cases of circumstantial evidence, motive being circumstance bearing on the identity of the accused as the perpetrator of the crime.”(alteration by court) (internal quotation marks omitted)); State v. Lancaster, 167 Ohio St. 391, 149 N.E.2d 157, 162 (Ohio 1958)(“In doubtful cases the element of motive may be quite material in the determination of the guilt or innocence of the accused.”) (internal quotation marks omitted)).

Presence at the Scene of the Murder

Further, the State established beyond any doubt the presence of Phillips at the scene of the murder at the time of the murder. By Phillips’ own admissions, she was present at the scene of Melvin’s murder at the time of his murder. Phillips was present at the scene when police arrived. Thus, Phillips had the opportunity to murder Melvin. Frazier. Compare State v. Pearson, 410 S.C. 392, 394, 401, 764 S.E.2d 706, 707-08, 711 (Ct. App. 2014) *cert. granted*

(March 4, 2015); State v. Mitchell, 341 S.C. 406, 401-02, 409, 535 S.E.2d 126, 127 (2000); State v. Buckmon, 347 S.C. 316, 322-23, 555 S.E.2d 402, 405 (2001)(holding a defendant was entitled to a directed verdict when none of the evidence presented by the State placed the defendant at the crime scene and the jury was left to speculate as to the defendant's guilt); Odems; Bostick.

Phillips seeks to compare her case to the following cases: State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984); State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011); State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011); State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001). In each of those cases, the South Carolina Supreme Court found that a directed verdict was warranted based on the evidence presented by the State at trial. However, the instant case is distinguishable from all of those cases.

In all of the cases cited by Phillips, and others, the Court specifically noted that the State had failed to present evidence placing the defendant at the scene of the crime. State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 452 (1984)(“Nothing in evidence places Schrock at the scene of the crime.”); State v. Martin, 340 S.C. 597, 602, 533 S.E.2d 572, 574 (2000) (“Most significantly, the State’s evidence failed to place either defendant inside the apartment.”); State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)(“The fact that respondent’s fingerprint was on a screen that was propped up against the house does not prove entry where respondent had been in and around the victim’s house at least three times.”); State v. Arnold, 361 S.C. 386, 390, 605 S.E.2d 529, 531 (2004) (“[T]here is no evidence respondent was at the scene of the crime”); State v. Bostick, 392 S.C. 134, 141, 708 S.E.2d 774, 778 (2011) (“No direct evidence linked Bostick to the crime scene or the items found in the burn pile.”); State v. Odems, 395 S.C. 582, 590, 720 S.E.2d 48, 52 (2011) (“[T]here is no evidence before this Court

placing Petitioner at the crime scene.”).²⁵ Respondent submits that, unlike the evidence presented in the cases cited by Phillips, in this case there was evidence Phillips was at the scene by her own admission. A fact she also admits in her brief.

In Arnold the victim was shot and his body was found off a dirt road in Colleton County. 361 S.C. at 388, 605 S.E.2d at 530. The car that the victim had been driving the last day he was seen alive was recovered in Johnson City, Tennessee, and a witness testified that Arnold called him the day after the victim was shot from Arnold’s father’s home ten (10) miles from where the car was found. Id. at 389, 605 S.E.2d at 530. Arnold’s fingerprint was found on a coffee cup lid in the center console. Id., 605 S.E.2d at 530. The South Carolina Supreme Court found that such evidence “raise[d] a suspicion of guilt, but [was] not evidence that the respondent killed [the victim].” Id. at 390, 605 S.E.2d at 531.

The facts of this case are completely different. Phillips admitted she was present at the scene of the crime when Melvin was murdered. The video tape from the gas station established she was in York at least before 6:05 p.m., not far from Melvin’s residence, and entered the Bi Lo at approximately 6:15 p.m. and left at 6:28 p.m., again, not far from Melvin’s residence. She did not call 911 until **7:30 p.m.**, and only after contacting her son, Hunter at 6:29 p.m. twice on her cell phone. When police arrived, they found her with duct tape on her, but it was loose on her person. Her clothing was not appreciably wet, as she would have been if she had lain in the rain

²⁵ However, although not relevant in this case, the Supreme Court of South Carolina has explicitly rejected “the proposition that the trial court must grant a directed verdict if the State fails to present evidence placing the defendant at the scene of the crime.” State v. Frazier, 386 S.C. 526, 532, 689 S.E.2d 610, 613 (2010). In Frazier the Court explained that “[i]n Arnold, Martin, and Schrock we held that the State did not produce substantial circumstantial evidence of the defendant’s guilt and noted that the State presented *no* evidence that the defendant was at the scene. We reject any interpretation that these cases altered or increased the sufficiency of evidence standard a trial court is to apply in a case based on circumstantial evidence.” Id. (emphasis in original).

and mud for 30 to 35 minutes as she claimed, or as she would have been if her head and hair were forced down into the mud as she claimed. She told police she and Melvin got along fine and there were no problems in the relationship, when in fact the relationship was ending, Melvin had cut her off financially, the two argued frequently, and she had attempted to hire several different individuals to murder Melvin. Phillips stood to inherit property worth substantial monetary value if Melvin died for any reason, and at the time of Melvin's murder she was financially destitute. Phillips believed if Melvin died for any reason, she would be well taken care of. Phillips had gun primer residue on her blouse and round lead particles on her vest, indicating she was within 8 to 10 feet of Melvin when he was shot.

Phillips compares her case to Bostick, a case where the victim was found bludgeoned in her house, which had been set ablaze. 392 S.C. at 136, 708 S.E.2d at 775. The Court recited the following evidence that had been presented against Bostick:

(1) [victim's] car keys, calculator, and other items from her home were found in the Bostick family's burn pile; (2) the fire in the burn pile was accelerated with either kerosene or diesel fuel, and Bostick's mother did not use those accelerants when she burned things in the pile; (3) Bostick had a pattern that matched gasoline on his shoes and gasoline was the accelerant used for the house fire; and (4) while the DNA from the blood on Bostick's jeans excluded about ninety-nine percent of the population, the blood could not be matched to [victim's] DNA.

392 S.C. at 142, 708 S.E.2d 774, 778. In finding that a directed verdict was appropriate, the Court noted there was no evidence linking Bostick to the crime scene or to the items found in the burn pile, nor was the weapon used to beat the victim ever introduced. Id. at 141, 708 S.E.2d at 778. Finally, though the State had theorized that the victim, who was treasurer for her church, was killed for the money she had at her home, the Court pointed out that "no evidence was introduced concerning Bostick's knowledge that [the victim] may have had money in the briefcase or if indeed any money was in the briefcase on that particular Sunday." Id. at 142, 708 S.E.2d at 778.

Phillips urges the evidence in Bostick is similar to the evidence presented by the State in this case. Respondent disagrees. As previously discussed, the evidence presented by the State in Bostick only established the above recited facts. Respondent points out that, unlike in Bostick, the State was able to show a “truck load” of motive that Phillips had to kill Melvin, including that Melvin had cut her off completely financially, Phillips was financially destitute, Phillips believed Melvin was seeing another woman, and Phillips knew she would inherit a substantial sum of money or property if Melvin died now, before he had the opportunity to change his will. Further, Phillips admitted she was present at the scene of the crime when Melvin was murdered.

Phillips argues this case is akin to State v. Lollis, 342 S.C. 580, 541 S.E.2d 254 (2001), however it is not. In Lollis, the defendant was convicted of arson based primarily on possession of a key to a storage building. The Supreme Court reversed the denial of his directed verdict motion finding the possession of the storage building key was not substantial circumstantial evidence. Further, in Lollis, there was no proof that Lollis was present at the scene of the crime at the time of the arson. In fact, his wife testified she set the fire and Lollis was not involved. Even more importantly, the Supreme Court found that the failure of the State to introduce any evidence that Lollis was in financial difficulties and therefore had a motive to set the fire was critical. Id. at 584-85.

In the present case, the State established both that Phillips was in financial difficulties and knew she would benefit substantially from Melvin’s death, and also she was present at the scene of the crime at the time of the murder. Further, the State proved Phillips had attempted to hire several individuals to murder Melvin Roberts in the weeks leading up to his death, attempted to blackmail one (1) friend to participate and aid in the attempt, staged the crime scene to appear

to look like a robbery, and lied to police about the nature of the relationship between she and the victim.

Respondent submits that the evidence presented in the instant case is akin to the evidence presented by the State in Frazier, where the South Carolina Supreme Court upheld the denial of a directed verdict motion. 386 S.C. at 531–32, 689 S.E.2d at 613. In that case, the Court ruled that the State had presented substantial circumstantial evidence of guilt by presenting evidence of the following: an affair between the victim’s wife and the defendant, defendant’s knowledge of victim’s whereabouts, defendant’s confrontation with the victim a few days before the murder, defendant’s actions taken in preparation for the murder, eyewitness testimony placing defendant near the murder scene at the time of the murder, and false statements made to police during the investigation. Frazier, 386 S.C. at 531–32, 689 S.E.2d 610, 613. Respondent submits that the State presented substantial circumstantial evidence in the instant case of the same caliber as the evidence presented in Frazier, and Respondent asks the Court to find, just as the Court did in Frazier, that “[t]his evidence, when viewed collectively, presented a jury question. . .” as to Phillips’ guilt. Id. at 532, 689 S.E.2d at 613. *See also* Rogers, 405 S.C. at 567, 748 S.E.2d 272 (“Circumstantial evidence ... gains its strength from its combination with other evidence, and all the circumstantial evidence presented in a case must be considered together in determining whether it is sufficient to submit to the jury.”); Harry, *supra*, *quoting* Rogers.

Phillips implies that the trial court only considered the testimony of Blankenship in denying the motion for directed verdict at trial. However, the record shows that the trial court considered the totality of the circumstances and the evidence that was presented by the State in its denial of the motion for a directed verdict. Indeed, a single piece of circumstantial evidence presented in this case may only have been enough to raise a suspicion of guilt, but Respondent

submits that the State presented substantial circumstantial evidence in this case, and when viewed collectively, the evidence raised a jury question as to guilt. Rogers, *supra*.

Accomplice Liability

Further, the State proved Phillips was complicit in and participated in Melvin's murder by the evidence at trial, including the testimony of its gunshot residue expert, Phillips' contradictory and false statements she made to police during the investigation, and the staging of the crime scene in an attempt to make the crime appear to be a robbery and herself a victim instead of the plain murder of Melvin Roberts. State v. Burdette, 335 S.C. 34, 45, 515 S.E.2d 525, 531 (1999)(holding that any person, who aids, abets, and encourages another in and is present during the commission of a crime is guilty as principal); State v. Langley, 334 S.C. 643, 648, 515 S.E.2d 98, 101 (1999)(holding that under the "hand of one, the hand of all" theory, "one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose."); State v. Massey, 267 S.C. 432, 443, 229 S.E.2d 332, 338 (1976)(wherein the Court held the trial judge did not err in refusing to direct a verdict on murder, burglary, and armed robbery where circumstantial evidence showed the appellant was present at the victim's house or nearby waiting in a car and acting in concert with other perpetrators). Phillip's identity as one (1) of the perpetrators of Melvin's murder was established by substantial circumstantial evidence. State v. McCombs, 368 S.C. 489, 493, 629 S.E.2d 361, 363 (2006); Weston, 367 S.C. at 292-93, 625 S.E.2d at 648; In the Interest of Bruce O, 311 S.C. 514, 515, 429 S.E.2d 858, 858 (Ct. App. 1993).

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, m]ere 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 that 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); Larmand, *supra*; Harry, *supra*.²⁶

There was more than sufficient direct and substantial circumstantial evidence Phillips 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, 615, 649 S.E.2d 145, 150 (Ct. App. 2007)(holding that evidence the defendant and his co-defendant together chased after two men in the melee of a parking lot brawl

²⁶ Further, because the crime of conspiracy is the agreement itself, the State need not show any overt acts in furtherance of the common scheme or plan. Larmand, *supra*; State v. Wilson, 315 S.C. 289, 292, 294, 433 S.E.2d 864, 867, 868 (1993). Nonetheless, substantive crimes committed in furtherance of the conspiracy may constitute circumstantial evidence from which a jury could infer the existence of the conspiracy, its object, and scope. Id.; Wilson.

and fired shots, killing a bystander, was sufficient to overcome a directed verdict motion); *see also State v. Langley*, 334 S.C. 643, 649, 515 S.E.2d 98, 101 (1999)(indicating evidence that 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).

When interviewed by police, Phillips denied there were any problems in the relationship between her and Melvin. She claimed their relationship was fine. She denied there were any problems between Melvin and her son, Hunter. She told police she and Melvin only argued about her driving.

The evidence at trial established all of these statements were lies. Melvin and Phillips argued regularly. They argued when together and even over the phone. They argued about her son. They argued about the dress shop.

Melvin had discovered Phillips was stealing from him. He was ending the relationship; the two were not engaging in sexual intercourse. In fact, Melvin would not even touch Phillips.

Melvin had cut Phillips completely off financially. He was no longer paying any of her bills. At the time of the murder, Phillips was financially destitute. She had overdrawn her checking account and owed the bank approximately \$1,500. She had no incoming money because the consignment store was failing, and Melvin wanted to close the store. She had exorbitant prescription bills which she could not pay for. She was also addicted to prescription pain killers including Oxycontin, Lortab, and Xanax, which she purchased on the black market. She was stealing from Melvin in order to finance her and her son Hunter's drug addiction.

Phillips stood to inherit a building worth over \$150,000 and a car of her choice if Melvin died before changing his will. Phillips was aware Melvin had changed his will before. Phillips

also believed that if Melvin died, she would be well taken care of and could continue to live as she had in the past.

Phillips attempted to hire several different individuals to murder Melvin in the weeks leading up to his death. Phillips even attempted to blackmail one (1) friend into helping with Melvin's murder. Again, Phillips told police there were no problems in the relationship, and she and Melvin never argued.

Phillips claimed at the time of Melvin's murder, she was behind a tall brick wall approximately 60 feet from Melvin when the *alleged* perpetrator fired his gun at Melvin. The physical evidence however, along with the testimony of the State's expert showed she was within 8 feet of the gun when it was fired. Further, she was bound loosely with duct tape, and her story of how she escaped from the duct tape did not match the physical evidence.

The jury could infer from this evidence along with her prior attempts to hire several individuals to kill Melvin, that Phillips was eventually successful in finding someone to assist her in Melvin's murder, and she and the other perpetrator staged the crime scene to look like a robbery and she made a false 911 call alleging a robbery, to cover up the real crime, when in fact the crime was a murder, and nothing else, so she could benefit financially from Melvin's death. As with the destruction or attempted destruction of evidence, staging a crime scene to make it appear that it is something that it is not, is evidence of guilt. *See 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. Wells*, 162 S.C. 509, 161 S.E. 177 (1931)(similar).²⁷

²⁷ See generally *State v. Epes*, 209 S.C. 246, 265, 39 S.E.2d 769 (1946)("The action of the appellant in concealing the body of his wife so as to divert suspicion from himself, was a relevant circumstance tending to show guilt, and it was for the jury to estimate its weight, and it was for the jury to determine whether his explanation and the motive he assigned were truthful or otherwise."); 40A Am Jur.2d Homicide, section 462 (1999)(concealment or attempted

Nothing was missing from the crime scene as far as valuables as far as police could determine. Melvin's wallet was still in his pocket containing several hundred dollars. His jewelry was still on his person. The money bag was lying on the ground and contained more cash. Phillips' bracelet was found on the ground near the money bag. Melvin's house was not burglarized. The jury could infer from the totality of the evidence in the record, including Phillips' contradictory and false statements about the crime and her relationship with Melvin, that there was no robbery; she was not kidnapped as she claimed, and that she was complicit in the murder, staged the crime scene, and tried to cover up the crime when it was over. Further, the jury could infer from the evidence, that Phillips continued to mislead and misdirect police during the investigation to protect herself from being caught and protect her co-conspirator and co-perpetrator in the murder. Furthermore, the jury could infer or find from all of the evidence that Melvin and Phillips' relationship was ending; Phillips believed she had laid her life down for Melvin even though he had never married her; she was now approaching 70 years of age and financially destitute with a drug addiction problem; and she needed to murder Melvin now before he had the opportunity to change his will or she would be left with nothing. In summary, from the evidence presented by the State, the jury could find Phillips was present, complicit in, aided and abetted in the murder, and in fact instigated it.

The Defense' case did not change the quantum of evidence the State had presented. *See Lynch; Hepburn*, 406 S.C. at 429-42, 753 S.E.2d 402, *adopting State v. Harry; Cf. Thompkins, supra*.

destruction of body of murder victim is regarded as incriminating circumstance..., an inference of guilt may be drawn therefrom).

Phillips called a private investigator, William Beam, who testified he reviewed the investigation and in his opinion there were leads that were not followed up on by police unless there were connected to Phillips. (R. 769-72, Tr. pp. 972-75). However, the jury did not have to believe this evidence. Further, several different officers testified to their following up various leads or attempting to follow up various leads. Beam also claimed he saw a bullet hole in Phillips' couch at her residence in Gaffney after the crime and clothing was stacked on the bullet hole. Beam implied gunshot residue could have gotten on Phillips' clothing this way. However, Phillips told police the night of the murder that all of her clothing was at Melvin's residence. Additionally, she told police during the investigation that the clothing she was wearing the night of the murder had just been dry cleaned.

Gerome French testified he saw two (2) men coming from the direction of some woods the night of Melvin's murder. French testified they passed in front of his house and turned left and went behind some other residences. They were not running. They were walking. (R. 792-93, Tr. pp. 995-96). Phillips offered no proof either of these men were involved in the crime at all. Further, the State's testimony established there was only one (1) other perpetrator along with Phillips, the one (1) who left only a single set of footprints, and his trail stopped in the middle of the street, where either someone picked him up, or he got into a vehicle and drove himself away.

Another neighbor, Andrew Clay, told police that on the night of the murder he saw a scratched red truck with a "bunch of Mexicans" in it on Melvin's street. (R. 797-98, Tr. pp. 1000-01). Phillips produced no evidence this truck or these men were involved in the crime. Further, there was no proof that anyone got out of this truck. Clay could not even remember telling the police this.

Gina Bass, who lived across the street from Melvin, testified that on two (2) different days during the week before Melvin's murder, she saw a "black Lincoln" enter Melvin's driveway at a high rate of speed. It circled through and left. It was driven by a black male. (R. 803-05, Tr. pp. 1006-1008). Phillips introduced no evidence this vehicle or this person had anything to do with Melvin's murder. In fact, the evidence showed Melvin owned a "black Lincoln." Further, Bass admitted it could have been someone who was just turning around on two (2) different occasions. She had no idea what the person was doing or who the person was, or that it had anything to do with Melvin's murder.

Joi Frederick, defense counsel's paralegal, testified Phillips abandoned any claim under Melvin's will and her family paid for her defense. However, Fredrick admitted Julia did not abandon any claim under Melvin's will until after her arrest for Melvin's murder. Further, she admitted Phillips' sisters paid for her defense, not Phillips. (R. 808-15, Tr. pp. 1011-18).

Finally, Phillips introduced her own gunshot residue expert. (R. 816-43, Tr. pp. 1026-53). He testified there were only two (2) particles of gunshot residue on Phillips' clothes, one (1) particle on each arm. He testified he would have expected to see more had she been around the weapon when fired. He believed this residue could have come from transference. However, he admitted Phillips did have three particle gunshot residue on her shirt sleeves which contained lead, antimony, and barium. While he testified there was not sufficient gun primer residue to call it gun primer residue according to the FBI and the U.S. Army Crime Lab, he admitted the amount of gunshot residue was sufficient for identification according to the standards of the American Society of Crime Lab Directors (ASCLD), the governing body that accredited SLED's laboratory, where the State's expert was from. He also admitted when a person fires a weapon, you will also find squished three (3) particle components as was found by the State's expert in

this case on Phillips' blouse cuffs. He also admitted you would not expect Phillips would have had gunshot residue on her shirt from the firing of the murder weapon if she was behind a wall 60 feet away when the shot was fired. He also admitted you would not find gunshot residue on a shirt after it was dry cleaned. Further, the jury did not have to accept the defense' expert on gunshot residue. The jury could accept the State's expert's testimony on gunshot residue. Judge Cole appropriately denied Phillips' motion for a directed verdict at the close of the Defense' case.

Phillips argues the wrong law

Finally, Phillips asserts that the State did not exclude other reasonable hypotheses in the presentation of its evidence as alluded to in the former traditional circumstantial evidence charge. See State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989), *abrogated by* State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013). The South Carolina Supreme Court has abandoned that definition as a jury charge, but the definition was still used in examining the sufficiency of the circumstantial evidence at the directed verdict stage in Odems, 395 S.C. at 590, 720 S.E.2d at 53. Under the former traditional circumstantial evidence definition, every circumstance relied upon by the State [must] be proven beyond a reasonable doubt; and . . . all of the circumstances so proven be consistent with each other and taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis. . . . State v. Cherry, 361 S.C. 588, 595, 606 S.E.2d 475, 479 (2004).

However, this is no longer necessary in considering a motion for a directed verdict. "[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; State v. Harry, 413 S.C. 534,

776 S.E.2d 387 (Ct. App. 2015).²⁸ Rather, our Supreme Court has “rejected the contention that in ruling on a directed verdict motion, the trial judge must grant a directed verdict unless the circumstantial evidence pointed conclusively to the defendant’s guilt, to the exclusion of every other reasonable hypothesis.” Cherry, 361 S.C. at 594, 606 S.E.2d at 478.²⁹ 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 her guilt may be fairly and logically deduced. Hepburn, 406 S.C. at 429, 753 S.E.2d 402, *quoting* State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126, 127 (2000); Freiburger, 366 S.C. at 136, 620 S.E.2d at 743; Weston, 367 S.C. at 292, 625 S.E.2d at 648 (If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the case must be submitted to the jury); Lynch, *supra* (same).³⁰

As a result, Judge Cole did not abuse his discretion, in denying the motions for a directed verdict on this record. Judge Cole did not err in denying the motions for a directed verdict at the close of the State’s or Phillips’ case. Heyward; Bell; Kelsey; Johnson; State v. Frazier, 386 S.C. 526, 689 S.E.2d 610 (2010)(holding evidence was sufficient to overcome motion for directed verdict where evidence placed defendant at or near the scene of the crime, defendant had motive to kill victim, and defendant made false statements to police during the investigation); Hepburn,

²⁸ See Cherry, 361 S.C. at 594, 606 S.E.2d at 478 (emphasis removed).

²⁹ See also State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013) and State v. Lynch, 412 S.C. 156, 771 S.E.2d 346 (2015)(discussing circumstantial evidence jury charge in light of State v. Grippon, 327 S.C. 79, 489 S.E.2d 462 (1997); State v. Cherry 361 S.C. 588, 606 S.E.2d 475 (2004) and Logan).

³⁰ Furthermore, besides the theory that Phillips murdered Roberts with an unknown accomplice, there is no other reasonable theory. And the State did exclude any other reasonable hypothesis at trial by presenting evidence of Melvin Roberts’ murder, the lengthy investigation of the same, and the evidence of Phillips’ involvement. Respondent denies that any other hypotheses are reasonable in view of the facts of the case. Further, the evidence and facts presented at trial are inconsistent with any other reasonable hypothesis.

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); *Cf. State v. Thompkins*, 220 S.C. 523, 68 S.E.2d 465 (1951)(citation omitted).

The State presented substantial circumstantial evidence of Phillips' guilt at trial through its presentation of the evidence. Thus, Judge Cole did not err in denying Phillips' motions for directed verdict, and this Court should affirm Judge Cole's ruling.

CONCLUSION

Judge Cole did not err, i.e. abuse his discretion, in denying the motion(s) for a directed verdict because there was substantial circumstantial evidence of Phillips' guilt of murder. For the foregoing reasons, the judgment, conviction, and sentence of the lower court should be affirmed.

Respectfully submitted,

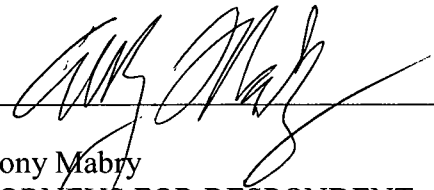
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November 25, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
The Honorable J. Derham Cole, Circuit Court Judge
Appellate Case No. 2013-001953

THE STATE

Respondent

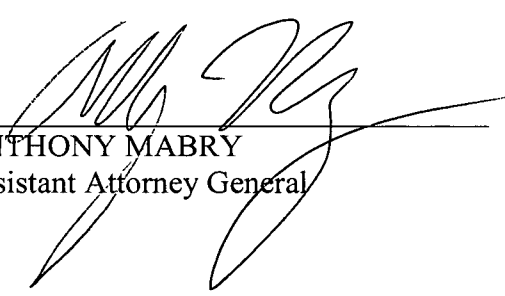
V.

JULIA B. PHILLIPS,

Appellant

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007 Order of the South Carolina Supreme Court entitled “Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings.”



ANTHONY MABRY
Assistant Attorney General

November 25, 2015

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SC Court of Appeals

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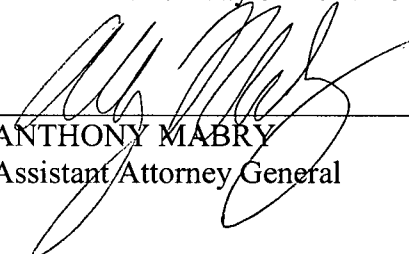
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CERTIFICATE OF SERVICE

I **Anthony Mabry**, hereby certify that I have served the Final Brief of Respondent in the foregoing action by depositing two copies of same in the United States Mail to Michael P. Scott, Esquire, Nexsen Pruet, LLC, P. O. Box 486, Charleston, SC 29402 and by InterAgency Mail to Robert M. Dudek, Chief Appellate Defender, SCCID/Division of Appellate Defense, 1330 Lady Street, Suite #401, Columbia, South Carolina 29201 this 25th day of November, 2015.



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