

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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On Certiorari to the Court of Appeals
Appeal from Horry County
Steven H. John, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2015-002161

THE STATE,

Appellant,

v.

KAREEM HARRY,

Respondent.

BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Did the Court of Appeals err in finding a directed verdict was properly denied on the charge of murder under hand of one hand of all accomplice liability where the State failed to present substantial circumstantial evidence that Harry planned to confront and assault the victim or otherwise intended any unlawful action that would foreseeably result in a homicide?

RESPONDENT'S COUNTER-STATEMENT OF ISSUE

Whether Judge John properly denied the motion for a directed verdict of acquittal, where there was direct and/or substantial circumstantial evidence proving Harry guilty of murder under accomplice liability; and, therefore the Court of Appeals must be affirmed?

STATEMENT OF THE CASE

Appellant, Kareem Harry, murdered Kevin Bowens on March 1, 2011 in Horry County. Appellant was arrested two (2) days later on March 3rd and charged with Bowens' murder. On July 26, 2012, appellant was indicted by the Horry County grand jury for the murder. (*Ind. # 2011-GS-26-2938*). Appellant proceeded to a jury trial from February 11-14, 2013 before the Honorable Stephen H. John, Circuit Court Judge. At the trial's conclusion, the jury found appellant guilty of murder. Judge John sentenced appellant to thirty one (31) years confinement for Bowen's murder.¹ (R. 15-16, 409-10, 516, 528, 3, Indictment). Appellant directly appealed to the Court of Appeals raising one (1) issue [Judge John erred in denying his motion for a directed verdict]. On July 22, 2015, the Court of Appeals affirmed. State v. Harry, 413 S.C. 534, 776 S.E.2d 387 (Ct. App. 2015). Judge Konduros authored the Opinion of the Court, which was concurred in by Judge Thomas and Judge Geathers. A petition for rehearing was denied. A petition for writ of certiorari followed raising two (2) issues. This Court granted certiorari on issue one (1) [the denial of the directed verdict motion] and ordered briefing. Appellant filed his brief, and this is Respondent's responsive brief.

¹ Appellant's co-defendant Saire Castro pled guilty before appellant's trial to voluntary manslaughter and received a sentence of thirty (30) years. Appellant chose to proceed to trial and was convicted of murder and sentenced to thirty-one (31) years.

RESPONDENT'S STATEMENT OF FACTS

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

At the end of February, 2011, Harry's relationship with Ashley was ending because Harry had become physically abusive to Ashley, and a warrant had been issued for Harry's arrest for criminal domestic violence on February 26th. Police tried to arrest Harry that night, but Harry fled from Ashley's apartment complex. (R. 46-83, 226-28, 436, 438, 440-41, 470-72, 475-76).

Police had also previously raided the apartment Harry shared with Ashley several days prior and recovered drugs [cocaine]. As a result, Ashley was charged with trafficking. The apartment complex evicted Ashley, and she was forced to move into a new apartment in a different apartment complex. (R. 46-83, 226-28, 436, 438, 440-41, 470-72, 475-76).

At this same time, Harry was moving out of Ashley's original apartment and moving all of his personal items into *the mobile home* in which the mother of Harry's children lived with his children. Except for one (1) item, all of Harry's personal things were moved to *the mobile home* on February 28th with the assistance of Sage McPhail ("McPhail"), who owned a small red truck. Harry left a forty-seven (47) inch flat screen plasma television ("the T.V.") at Ashley's apartment. (R. 46-83, 226-28, 436, 438, 440-41, 470-72, 475-76).

Unknown to Harry, Ashley had met a new man, the victim in this case Kevin Bowens ("the

victim”), and engaged in a short romantic relationship with him beginning on the night of February 27th, 2011. That night, Ashley and the victim spent some time at a night club, and the victim eventually spent the night at Ashley’s apartment. According to Ashley, the following morning she allowed the victim to take *the T.V.* with the promise he pay her for it. According to Ashley, Harry had previously given Ashley permission to sell the T.V. if she could. The victim physically carried the flat screen T.V., which was not heavy, to his vehicle without any assistance from anyone else, including Ashley, and placed it in his car. When the victim arrived at his residence, he also carried the flat screen T.V. into his home without any assistance and placed it in his bedroom. (R. 46-83, 53-54, 304-05, 442-43, 483).

Harry was not aware Ashley had given the T.V. to the victim. At some point after moving out of Ashley’s original apartment, Harry began demanding of Ashley that she return the T.V. or pay him for it, because Harry needed the money for an upcoming probation hearing. Initially, Ashley misled Harry and told him she had given the T.V. to a girlfriend who was going to pay her for it, because Ashley was afraid of what Harry would do to her if he found out about the victim. Eventually, on the afternoon of March 1, 2011, Ashley admitted to Harry she had given the T.V. to another man. (R. 46-83; 53-56; 442-43, 403, 485).

On the night of March 1, 2011, Harry contacted Ashley, who was riding in a car with her friend Evelyn, and Harry demanded Ashley pull over wherever she was and meet him regarding the T.V. Ashley pulled into the parking lot of Waccamaw Hospital *in Murrell’s Inlet* and waited. Once Harry arrived, Ashley got into the vehicle Harry was operating, McPhail’s red truck, and Harry told Ashley to give him [Harry] the identity of the man she had given the T.V. to, i.e. the victim, and directions to his residence. Ashley, who had previously been assaulted by Harry, complied. Ashley informed Harry the victim Kevin Bowens had the T.V. and lived in Kings

Court subdivision. Ashley testified Harry knew exactly where Kings Court subdivision was located. (R. 53-56).

Harry indicated to Ashley they were going to the victim's residence, also *in Murrell's Inlet*, to get his T.V. back. Instead of traveling directly to the victim's residence, which was just 2.9 miles away, Harry drove to another apartment complex, approximately a thirty-four (34) minute drive away, where an associate and friend, Saire Castro ("Castro"), resided. Castro was also a drug dealer. Castro had recently been arrested in possession of two (2) pistols and drugs, and had moved into another friend's apartment on Burcale Road, *in Myrtle Beach*. In addition to the two (2) handguns, which were seized by police, Castro was known to carry a .357 magnum revolver. The .357 was kept on top of the kitchen cabinet in the apartment in which Castro now resided. (R. 46-83; 131-57; 186-87; 226; 400, 443).

Ashley testified that on the night of March 1st, Harry did not drive immediately to the victim's residence, which was just a couple of minutes away, but drove *the red truck* to the aforementioned apartment complex on Burcale Rd. *in Myrtle Beach*. Once there, Harry got out of the vehicle and went into an apartment and stayed approximately five (5) minutes while Ashley remained in the truck. When Harry returned, he had two (2) men with him, one (1) of whom was Castro. Castro was carrying the .357 revolver, which was secreted on his person. (R. 53-56; 102-03; 131-71).

The named lessee of the apartment Harry entered, Tommy Byrne ("Byrne"), also a close friend and associate of Harry, and also a drug dealer [primarily marijuana], testified that on the night of March 1, 2011, Harry came into his [Byrne's] apartment and asked to speak with Castro,

who was sitting at the kitchen table.² Harry did not ask to speak with anyone else in the apartment, only Castro. (R. 131-59).

Castro immediately got up and went into the living room with Harry, and the two (2) men [Harry and Castro] spoke privately for anywhere from five (5) to eight (8) minutes. Byrne could see the two (2) men talking, but could not hear what Harry and Castro were discussing because the men kept their voices low. At the end of their conversation, Castro came over to Byrne and asked Byrne if he wanted to “go for a ride.” Byrne agreed to go with Castro. Castro then immediately went into the kitchen where the .357 revolver was kept over the kitchen cabinet as Byrne headed out the door of the apartment. Castro retrieved the loaded .357 revolver. (R. 131-59, 165-71, 55-57, 59, 322-29, 278-81, 373-77).

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

Except for a brief stop at a gas station, where the three (3) men got out of their vehicles for a brief time together, Harry, driving the red truck, led Castro and Byrne to the victim’s residence in King’s Court subdivision, which was approximately a thirty (30) minute drive away from the apartment in which Harry and Castro had met privately and in which Castro had retrieved his .357

² Byrne allowed Castro to move into his apartment after Castro was arrested with the guns and drugs.

revolver. It was dark as the two (2) vehicles drove into Kings Court subdivision. (R. 161-63, 194-201).

The victim's longtime girlfriend, Christina Patterson ("Christina"), who resided with the victim in Kings Court subdivision, testified that shortly before the murder, she and the victim were eating dinner in the dining room of their home when the victim received a text message from Ashley accusing him of stealing the T.V. The victim was exasperated and told (texted) Ashley to stop texting him. The victim communicated to Christina that he had purchased the T.V. from Ashley with a combination of cash and marijuana. According to Christina, the victim then shut off his phone. (R. 287-316).

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

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

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

At some point, Harry signaled Ashley to get out of the truck. Ashley complied, walked over to the victim, and accused the victim of stealing the T.V. The victim denied he stole the T.V. Harry told Ashley to get back in the truck. (R. 169-70, 328, 453).

The victim told Harry he had given Ashley money and marijuana for the T.V. The victim stated he was not going to give the T.V. to the three (3) men. The three (3) men continued to demand the T.V., and the victim stated he was not giving it to them. When the victim finally made it clear the men could not have the T.V., and he was not giving them any money for the T.V., then and only then, did Castro pull out his .357 revolver and shoot the victim three (3) times. The victim was shot in the leg and two (2) times in the torso. (R. 170-71, 58-59, 453-54).

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

and the three (3) men were already heading back or getting into their two (2) vehicles, and she heard them say: “Lets go, Lets go.” (R. 328-31).³

The three (3) men, Harry, Castro, and Byrne, got back into their vehicles and left together in the same two (2) vehicles they had come into the neighborhood together in.⁴ At Harry’s direction, Ashley was now driving the red truck, and Harry was in the passenger seat. Castro was again driving his car, and Byrne was in the passenger seat. One (1) neighbor testified the two (2) cars pulled off from the culdesac slowly together, one behind the other. The vehicle containing Harry was the lead vehicle leaving the neighborhood as it had been on the way into the neighborhood. (R. 59-60,119-20, 164-65).

When Christina and a neighbor got to the victim, he had three (3) gunshot wounds, one (1) to the leg, one (1) to the center of his chest, and one (1) to the back.⁵ The victim died at the scene and was formally pronounced dead at the hospital. (R. 202-11, 277-86, 333).⁶

Another neighbor followed on foot the two (2) vehicles Harry, Castro, and Byrne were in as they left the subdivision, got a description of the vehicles, and relayed the same to the police.

³ Christina also thought she heard the men say something like “Oh shit.” (R. 328-31). However, the neighbor who was outside when the shooting occurred exclaimed: “Oh, shit,” and ran into her house. (R. 119).

⁴ The neighbor who was outside testified that after the first shot, the shooter turned around, extended his arm, and fired two (2) more shots into the victim. After the first shot, the other men with the shooter started moving toward their vehicles, but not fast or in a hurry. (R. 118-19).

⁵ Brian McGarrahan was the neighbor who responded to the victim in his front yard. McGarrahan was a fireman and a certified E.M.T. He testified the victim was laying on his stomach, and when the victim was turned over a firearm fell *out of his waistband* onto the ground. The victim was unresponsive except for one (1) agonal breath. Then, there was no pulse and no further respiration. McGarrahan informed 911 that the victim was pulseless, apneic, and had injuries incompatible with life. (R. 202-11).

⁶ Christina came forward five and a half (5 ½) months after the incident and admitted to police and testified at trial that a neighbor handed her the gun that fell out of the victim’s waist band and money and drugs that were on the victim’s person. Christina admitted she put the gun back in the victim’s closet, flushed the drugs down a toilet, and put the money in a jewelry box. (R. 333-34).

As the vehicles were leaving the general area of the crime scene, Castro instructed Byrne to throw the murder weapon out of the car, which Byrne did, but not before wiping the gun down to remove any fingerprints. Police almost immediately attempted to stop the two (2) vehicles with blue lights near Hwy 17. Harry ordered Ashley not to stop and to continue driving, which she did for a brief period of time. When she finally decided to stop anyway, Harry fled from the passenger seat of the red truck while it was still moving and escaped on foot. Harry later claimed he lost his cell phone while fleeing from police.⁷ Ashley was taken into custody at the scene of the car stop. Castro and Byrne were stopped almost immediately and also taken into custody. (R. 18-32, 59-60, 120-21, 174-77).

Harry fled on foot for some distance and eventually made his way back to his residence [the mobile home] on Hwy. 544. Once there, he knocked on the window of a white SUV, registered in the name of the mother of his children, parked in his driveway occupied by McPhail. McPhail testified he had done some repair work on the SUV for Harry in exchange for cocaine and was returning the vehicle when Harry approached and knocked on the window. McPhail and Harry then got into a vehicle operated by Harry's brother, Kason. These three (3) men then proceeded back to Byrne's apartment, where Harry and Castro had first conversed. After dropping McPhail off at Byrne's apartment, Harry fled the apartment complex with his brother in his brother's car. (R. 18-32, 60, 215-49, 271-77).

While Harry was fleeing, Castro, Ashley, and Byrne were being questioned by police at a police substation. During a break in interrogation, Castro escaped from the police substation. Castro fled on foot, went back and recovered the murder weapon, discarded it in a lake, and shaved

⁷ Ashley testified that prior to the shooting, as the two (2) vehicles were proceeding to the victim's residence, Harry was on the phone with the victim.

his head to change his appearance. Castro eventually fled back to the apartment where he had originally met with Harry and obtained the .357. McPhail was there and assisted Castro in fleeing the area. McPhail was arrested shortly thereafter and charged with accessory after the fact of murder. Castro then fled to Florida. He was arrested there by United States Marshalls on a fugitive warrant and returned to South Carolina and charged with Bowen's murder. (R. 18-32, 59-60, 177-79, 407-08). Byrne and Ashley were also charged with murder. Harry was arrested two (2) days later, on March 3, 2011, and charged with the victim's murder. (R. 47-48, 103-07, 145, 177, 379, 343-50; 409-10, 423).

Later, after Byrne agreed to "cooperate" with police, he took them back to the site where the murder weapon was allegedly thrown out of Castro's vehicle. Police searched the area several times but were never able to locate the murder weapon. (R. 178-79).⁸

All of the defendants testified during the trial. Castro, and of course Harry, both testified for the defense. The other defendants [Ashley, Byrne, and McPhail] testified in the State's case under proffer agreements, in which no promises were made to them regarding the resolution of their charges. At the time of this trial, none of these three (3) testifying co-defendants had gone to trial or their charges been disposed of. They were still exposed to the maximum sentence for murder [Byrne & Ashley] or accessory after the fact of murder [McPhail]. Like Harry and Castro, they each gave testimony attempting to exonerate themselves of any criminal responsibility for murder; however, their combined testimony was consistent in several important respects: (1) Harry had recently broke up with Ashley and wanted his T.V. back or the money for the T.V.; (2) Harry was operating a vehicle that was not registered to him, McPhail's vehicle, on the night in

⁸ Police did not know until Harry's trial when Castro testified that he [Castro] had retrieved the murder weapon after escaping the police substation and thrown the gun in a lake or pond.

question; (3) Harry did not go directly to the victim's residence, which was close by, after learning the victim had the T.V. even though he knew where Kings Court subdivision was located and had Ashley in *the truck* with him; (4) Instead, Harry drove to *Castro's apartment*, which was a considerable distance away, and privately enlisted Castro, who was known to carry a weapon, to come with him; (5) Castro immediately went into the kitchen and obtained his loaded .357 revolver; (6) all of the co-defendants, except McPhail, then went together to the victim's residence, in two separate vehicles, with Harry leading the way, where the victim was confronted about the T.V.; (7) when the victim made it clear he was not going to give them the T.V. or money for the T.V., the victim was immediately shot by Castro with the .357 revolver; (8) whereupon all the defendants immediately left the area together with Harry's vehicle leading the way; (9) Castro and Byrne disposed of the murder weapon, and (10) Harry and Castro eventually fled from police; Harry at the car stop, and Castro from the police station. (R. 46-83; 131-93; 215-50; 271-78). Ashley, along with the testimony of the victim's long-time girlfriend Christina, established Harry did not need the assistance of the two (2) other men [Byrne and Castro] to load or unload the flat screen T.V. as the victim had loaded and unloaded the T.V. without the assistance of anyone. While the co-defendant's testimony *with charges still pending* was consistent in the above respects, it was inconsistent with each other in several important respects, and inconsistent with the testimony of eyewitnesses to the murder, including the victim's longtime girlfriend Christina Patterson. (R. 46-83; 114-27; 215-50; 271-78; 287-351).

In the defense' case, Castro testified differently from the co-defendants and Harry. Castro testified the shooting was not strictly over the T.V., but the reason the men went to the victim's residence to confront him was because the victim had stolen some *drugs* or *drug money* from Ashley's apartment the night he stayed over. Castro denied the secret meeting between he and

Harry in Byrne's apartment took place. Castro also claimed that at the time of their confronting the victim, the victim pulled his gun and was going to shoot Harry, when Castro shot the victim in defense of Harry.⁹ However, Castro admitted before he shot the victim, Harry gave the victim a "head nod." (R. 365-402).

Harry testified differently than Castro and the co-defendants. Harry testified he did not go to Castro's apartment to get Castro and enlist his support, but to buy marijuana from Byrne. Harry testified he, Ashley, Castro, and Byrne went by the victim's residence on a side-trip, i.e. on their way to return McPhail's truck to him and for Castro to make a drug sale in the area. Harry claimed that he was planning to go to Ashley's new apartment while Castro and Byrne returned McPhail's truck, and he and Ashley were going to "chill" at her new apartment and smoke "weed." Harry testified the exchange with the victim at the victim's home between the men was calm and polite; he, Harry did not really care about the T.V., and Castro shot the victim without any warning and/or his foreknowledge.¹⁰ According to Harry, he never saw the victim pull a gun as Castro claimed. Harry claimed he had turned his back to say something to Ashley, when Castro shot the victim. Harry claimed everyone ran back to their vehicles after Castro shot the victim the first time. Harry claimed he did see the victim pointing a gun at him as the victim lay on the ground wounded, and that was why he fled the scene and directed Ashley to drive. Harry also made numerous admissions that only further strengthened the State's case that Harry was guilty of

⁹ None of the other co-defendants, including Harry, testified the victim pulled his weapon before Castro shot the victim. (R. 46-83; 215-50, 434-509). Harry basically conceded in his brief to the Court of Appeals that Castro's version of the shooting was not credible *and* Castro had no justification for shooting the victim. Harry did not even argue Castro acted appropriately. (BOA, p. 10; 11-19)

¹⁰ Harry testified the only person who raised their voice to the victim was Ashley, and she was told to get back in the truck. The victim also remained calm. According to Harry, there was no animosity between the men. (R. 455-56).

murder.¹¹ (R. 434-509).

ARGUMENT

Judge John did not err in denying the motion for a directed verdict of acquittal because there was direct and/or substantial circumstantial evidence of Harry's guilt of murder under accomplice liability; therefore, the Court of Appeals must be affirmed.

What Occurred Below

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

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

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

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

¹¹ See discussion of Harry's testimony, *infra*.

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

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

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

(R. 514-15). After the jury convicted Harry of murder, Harry renewed his previous motions for a directed verdict as a motion for a new trial, which was again denied by Judge John. (R. 519-20).

In denying the motion for a new trial, Judge John stated as follows:

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

(R. 520).

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

The Lack of Merit of Harry's Argument

The gist of Harry's argument is that the State's case failed because there was no testimonial evidence of an express agreement between Harry and Castro to assault, injure or kill the victim. The effect of Harry's analysis would be - that unless the State can produce evidence of actual discussions between co-conspirators or co-perpetrators while planning the crime, a defendant's

testimony (after the State rests its case-in-chief) that he never conspired with his co-defendant, and never intended to commit any crime, will mandate a directed verdict on any charge requiring an agreement, premeditation, or an intent to commit a crime. Under Harry's analysis, the defendants' concerted actions leading up to and during the crime will be irrelevant, while their protestations of innocence and claim of lack of intent will be paramount. Such a result renders the well-established directed verdict analysis, and the applicable standard of appellate review, completely meaningless. Further, it would be an impossible burden for the State to meet in a case such as this where the two (2) key perpetrators held a private discussion, refused to cooperate or incriminate themselves, and their actions clearly show there was concert of action and both are guilty under the law of parties to a crime. This Court recently decided this issue against Harry in State v. Larmand, 415 S.C. 23, 780 S.E.2d 892 (2015).

General Standard of Review
(Appellate)

In criminal cases, this Court sits to review errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001). Thus on review, the appellate court is limited to determining whether the trial court abused its discretion. Wilson, 345 S.C. at 6, 545 S.E.2d at 829. An abuse of discretion occurs when the trial court's decision is unsupported by the evidence or controlled by an error of law. State v. Garrett, 350 S.C. 613, 619, 567 S.E.2d 523, 526 (Ct. App. 2002).

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); State v. Tyner, 273 S.C. 646, 258 S.E. 2d 559 (1979); State v. Irvin, 270 S.C. 539, 243 S.E.2d 195 (1978). In reviewing a denial of a directed verdict, this Court must view the evidence *and* all reasonable inferences in the light most favorable to the State. State v. Pearson, 415 S.C. 463, 783 S.E.2d 802 (2016); State v. Bennett, 415 S.C. 232, 781 S.E.2d 352, 753 (2016); State v. Butler, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014); 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).

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. Brown, 740 S.E.2d at 495; State v. Gentry, 363 S.C. 93, 610 S.E.2d 494, 500 (2005); 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); Gilliland at *3. This Court considers only the existence or non-existence of evidence, not witness' credibility or the evidence weight, in reviewing the denial of a directed verdict. State v. Bennett, 415 S.C. 232, 781 S.E.2d 352, 353 (2016); State v. Cherry, 361 S.C. 588, 593, 606 S.E.2d 475, 478-79 (2004); Rogers *supra*, n. 5, 748 S.E.2d 265, n. 5.

Our courts have repeatedly held, where the evidence is circumstantial, the evidence will be considered as a whole, not in isolation, in determining whether there was sufficient evidence to submit the case to the jury. State v. Frazier, 386 S.C. 526, 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 a5 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). State v. Rogers, 405 S.C. 554, 748 S.E.2d 265 (Ct. App. 2013).

If the State has presented any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, this Court must affirm the trial court's decision to submit the case to the jury. State v. Hepburn, 406 S.C. 416, 753 S.E.2d 402 (2013). "The appellate court may reverse the trial judge's denial of a motion for a directed verdict only if there is no evidence to support the judge's ruling." State v. Stanley, 365 S.C. 24, 42, 615 S.E.2d 455, 464 (Ct. App. 2005). In reviewing the trial judge's denial of a motion for a directed verdict, this Court is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis. Pearson, 415 S.C. 473-74, 783 S.E.2d 907-08; State v. Bennett, 415 S.C. 232, 781 S.E.2 352, 354 (2016), *citing* State v. Ballenger, 322 S.C. 196, 199, 470 S.E.2d 851, 853 (1996). If examining the evidence in the light most favorable to the State, there is evidence in the record which could induce a reasonable juror to find the defendant guilty, then this Court must affirm the trial judge's denial of the motion for a directed verdict. Pearson, 415 S.C. at 474, 783 S.E.2 808; Bennett, 781 S.E.2d at 354.

Where co-defendants **are not** tried jointly, and the appellant testifies and calls his co-defendant as a witness in appellant's case in chief, the waiver rule applies and the appellate court, including this Court, will consider all the evidence in the record in determining whether or not the trial judge erred in denying the motion for a directed verdict. State v. Phillips, 416 S.C. 184, 195-97, 785 S.E.2d 448, 453-54 (2016)(explaining Hepburn waiver rule); Hepburn, 406 S.C. at 429-42, 753 S.E.2d at 410, *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).

(Trial Court's Standard)

A motion for directed verdict is properly denied when there is any evidence, direct or circumstantial, that reasonably tends to prove the defendant's guilt. State v. Brandt, 393 S.C. 526, 542, 713 S.E.2d 591, 599 (2011). When ruling on a directed verdict motion, the trial court is concerned with the existence or nonexistence of evidence, not its weight. Cherry, 361 S.C. at 593, 606 S.E.2d at 477-78; State v. Gaines, 380 S.C. 23, 667 S.E.2d 728, 732-33 (2008); 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." Pearson, 415 S.C. at , 783 S.E.2d 805; Hepburn, 406 S.C. 416, 753 S.E.2d 402; Bennett, 415 S.C. 232, 781 S.E.2d 352, 354 (2016) *citing* Hepburn; Cherry, 361 S.C. at 594, 606 S.E.2d at 478 (emphasis removed). The trial judge is required to deny the motion for a directed verdict and submit the case to the jury if there is *any* direct evidence or *any* substantial circumstantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced. Hepburn, 406 S.C. at 429, 753 S.E.2d 402, *quoting* State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126, 127 (2000); *see also* Bennett, 781 S.E.2d at 354; State v. Freiburger, 366 S.C. 125, 136, 620 S.E.2d 737, 743 (2005)(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); Weston, 367 S.C. at 292, 625 S.E.2d at 648.

In ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must deny the motion for a directed verdict if the evidence is sufficient to allow a reasonable

juror to find the defendant guilty beyond a reasonable doubt. Bennett, 781 S.E.2d at 354. The trial court "...must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt." State v. Phillips, 416 S.C. 184, 193, 785 S.E.2d 448, 52 (2016), *quoting Bennett*, 415 S.C. at 237, 781 S.E.2d at 354. If examining the evidence in the light most favorable to the State, there is evidence in the record which could induce a reasonable juror to find the defendant guilty, then the trial judge must deny the motion for a directed verdict. Id.; Pearson, 415 S.C. at 474, 783 S.E.2 808.

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

The Law

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

Under the "hand of one is the hand of all" theory of accomplice liability, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose. A defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense. [However, mere presence and prior knowledge that a crime was going to be committed, without more, is insufficient to constitute guilt. [Rather,] presence at the scene of a crime by pre-arrangement to aid, encourage, or abet in the perpetration of the crime constitutes guilt as a principal.

State v. Thompson, 374 S.C. 257, 261-62, 647 S.E.2d 702, 704-05 (Ct. App. 2007)(internal quotations and citations omitted).

“Under an accomplice liability theory, ‘a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act.’” See State v. Condrey, 349 S.C. 184, 194, 562 S.E.2d 320, 325 (Ct. App. 2002)(quoting State v. Langley, 334 S.C. 643, 648-49, 515 S.E.2d 98, 101 (1999). In order to establish the parties agreed to achieve an illegal purpose, thereby establishing presence by pre-arrangement, the State need not prove a formal expressed agreement, but rather can prove the same by circumstantial evidence and the conduct of the parties. Id. at 193, 562 S.E.2d at 324 (stating 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).

The Evidence

The State’s Case

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

crime scene. (R. 46-83; 131-93).

The State's evidence established that once Harry found out who had the T.V. and where he resided, Harry did not drive to the victim's residence, *in Murrell's Inlet*, which was just 2.9 miles away, with Ashley in his vehicle [a truck] and attempt to obtain the return of the T.V. peacefully. Instead, Harry drove completely out of the way and went to another apartment complex, approximately 34 minutes away in Myrtle Beach, where Saire Castro, a man known the carry a .357 magnum pistol, resided. (R. 46-83, 131-93, 194-201).

Once there, Harry left Ashley in the vehicle, went directly into the apartment in which Castro resided, and privately and secretly enlisted Castro's cooperation and support. Harry did not ask to speak with anyone else, only Castro, the man known to carry a .357 revolver and who had recently been arrested in possession of two (2) other guns and drugs. Harry was on probation and could not possess a firearm without risking a significant prison sentence. There is certainly evidence Harry enlisted the assistance of Castro because Castro carried a loaded firearm, and Harry wanted such a person with him when he confronted the victim over the T.V. or the money for the T.V. Harry did not need Castro's assistance to load or transport the T.V. as Harry already had *a truck*, which he was driving, and the victim had loaded and unloaded the flat screen T.V. by himself on two (2) occasions with no assistance from others. (R. 46-83, 131-93, 194-201).

Further, the State's evidence established Harry knew where Kings Court subdivision was located, and he had Ashley in the truck with him when he was just 2.9 miles from the victim's residence. Further, the record shows that after the private conversation between Harry and Castro, in Byrne's apartment, which lasted five (5) to eight (8) minutes, Castro agreed to assist Harry and immediately walked into the kitchen and retrieved his loaded .357 magnum revolver from above the kitchen cabinet, and secreted it on his person, indicating a nefarious purpose for

arming himself. There is certainly an inference from this evidence that Harry instructed Castro to come with him and to bring the loaded .357 magnum pistol with him because they were going to need the gun in the confrontation with the victim, i.e. they were going to force, intimidate, injure, or kill the victim if he did not produce the T.V. or money for the T.V. Castro also enlisted a third (3rd) man, Tommy Byrne, to go with them. When Byrne and Castro got into Castro's vehicle, Byrne asked Castro what was going on. Castro stated specifically that they were going to get Harry's T.V. (R. 46-83; 131-93; 373-376, 194-201).

All three (3) men left Byrne's apartment complex together, in two (2) separate vehicles, with Harry leading the way, with Ashley, the person who had given or sold the T.V. to the victim, in tow. Harry, driving the red truck, led Castro, the man with the loaded gun driving his own vehicle, directly to the victim's residence, in Kings Court subdivision, except for only one (1) stop, at a convenience store, where the three (3) men got out together and briefly left Ashley alone in the truck. Harry, in the truck, then led Castro and Byrne in their vehicle to Kings Court subdivision, which Harry knew the location of. With Ashley providing specific directions as to the location of the victim's home inside the subdivision, Harry in his vehicle and Castro in his vehicle drove swiftly down the victim's street and hurriedly drove up *into the victim's yard*. This all occurred at approximately 10:00 to 11:00 p.m., at night, on March 1st, while dark. (R. 46-83; 131-93; 194-201; 114-27; 287-352; 35-37; 88-113).

All three (3) men exited the vehicles together and began yelling loudly across the victim's yard at the victim's house, i.e. they called the victim out of his own home. All three (3) men then confronted the victim in the victim's own yard, i.e. his driveway. The three (3) men surrounded the victim in semi-circle fashion, in the victim's own driveway, and exchanged words with the victim regarding the victim giving up the T.V. or money. Harry then directed Ashley to get out of

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

All three (3) men then left the murder scene and the subdivision together in the same two (2) vehicles they came in. Harry directed Ashley to drive the red truck, which she did. Castro was driving his vehicle with Byrne inside. The two (2) vehicles left the subdivision slowly. Harry was again leading the way as the two (2) vehicles left the subdivision. Castro directed Byrne to dispose of the murder weapon, which he did by throwing it out the passenger window, but not before wiping the gun down to remove any fingerprints. When police tried to stop Harry's vehicle, Harry instructed Ashley to continue driving and to not obey the police blue light, which she did. When Ashley finally ignored Harry's instructions and began to stop the truck, Harry fled from the passenger side on foot before the vehicle was even stopped. Harry not only fled from the scene, but led Castro and Byrne in their flight from the scene and then fled from the vehicle on foot just moments after the murder when police attempted to apprehend Harry. (R. 59-60; 119-20; 173-277; 207-08; 237-46). Flight is evidence of guilt when sufficiently connected to the murder, as it was in this case. State v. Beckham, 334 S.C. 302, 513 S.E.2d 606 (1999); State v. Al Amin, 353 S.C. 405, 578 S.E.2d 32 (Ct. App. 2003); State v. Milan-Hernandez, 287 S.C. 183, 336 S.E.2d

476 (1985). (R. 59-60; 119-20; 173-277; 207-08; 237-46).

Harry eventually fled back to his residence on Hwy. 544, and then Harry and his brother took McPhail to Byrne's apartment, the same apartment where Harry and Castro had the earlier secretive conversation and where Castro retrieved the firearm. Harry then fled that apartment complex with his brother Kason and was not arrested until two (2) days later on March 3rd. Beckham, 334 S.C. 302, 513 S.E.2d 606 (Flight is evidence of guilt when sufficiently connected to the murder); Al Amin, 353 S.C. 405, 578 S.E.2d 32 (same); Milan-Hernandez, 287 S.C. 183, 336 S.E.2d 476 (similar). Castro, like Harry, fled from the police station, re-disposed of the murder weapon, changed his appearance, returned to his [Byrne's] apartment, the same apartment at which he and Harry had met earlier, and fled the area with the assistance of McPhail. (R. 59-60; 119-20; 173-277; 207-08; 237-46).

There was more than sufficient direct and/or substantial circumstantial evidence Harry was guilty of murder under South Carolina's law of parties to a criminal offense to overcome the motion to for a directed verdict. State v. Larmand, 415 S.C. 23, 780 S.E.2d 892 (2015); 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 in a case with similar facts, that evidence the defendant and his co-defendant together chased after two men in the melee of a parking lot brawl 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). The evidence, and all of its inferences viewed in the light most favorable to the State, especially the actions of Harry and

Castro, indicates there was an agreement that they were going together to the victim's residence at night to force or intimidate the victim into returning the T.V. or money for the T.V., and if the victim refused, the victim would be assaulted, injured or killed by Castro, Harry's enforcer or "muscle." And, the victim died as a proximate result thereof. Accordingly, Judge John did not abuse his discretion in denying the motion for a directed verdict. Larmand; Gibson; Ward; Langley.

The Defense Case

Further, under the waiver rule, the defense' case only added to the clear evidence of guilt. It further solidified the State's case against Harry, and this Court must affirm. State v. Phillips, 416 S.C. 184, 195-97, 785 S.E.2d 448, 453-54 (2016)(explaining Hepburn waiver rule) Hepburn, 406 S.C. at 429-42, 753 S.E.2d 402, *adopting State v. Harry*; *Cf. Thompkins, supra*.

Castro testified the motive for confronting the victim was not just over a T.V., but over *drugs* or *drug money* the victim had stolen from Ashley's apartment the night he stayed over with Ashley at her apartment. (R. 367-68). All of the co-defendants, except McPhail [who was a drug user], were drug dealers. Castro admitted he had been arrested several days before the incident in possession of drugs and firearms. (R. 390-91). Byrne had already admitted in the State's case he was a drug dealer. Castro also testified Byrne was a drug dealer. (R. 376). Several different witnesses testified Harry was a drug dealer. Castro further admitted he had another firearm, a .357 magnum pistol, which had not been confiscated by police, that he took with him the night of the murder. (R. 378). He admitted he retrieved .357 from the kitchen. (R. 373-76). Castro admitted he was known to carry a gun. (R. 443). In addition to being drug dealers, Castro admitted he and appellant Harry were also rap musicians, and they had been collaborating on rap music for approximately three (3) years at the time of this murder. (R. 384, ln. 13 – 385, ln. 1,

392). And, they each had several recording studios which they used to collaborate on their rap music. (R. 384-85, 392). Harry and Castro knew each other extremely well, and as a result, Harry would have known Castro carried a gun.

Castro admitted Harry came to Byrne's apartment on the night of March 1, 2011, the night of the victim's murder. (R. 390). Although he denied the secret meeting with Harry occurred, Castro admitted after Harry came to Byrne's apartment, he [Castro] left the apartment with Harry and Byrne, and he carried his loaded .357 revolver with him. Castro admitted he retrieved the .357 from the kitchen of Byrne's apartment where it was regularly kept. (R. 373-76). Castro admitted it was Harry driving the red truck who led him [Castro] to the victim's residence. (R. 392, ll. 21-25). Castro admitted he did not know the victim Kevin Bowens. (R. 393, ll. 9-10). Castro also admitted it was not his T.V. at the victim's house. (R. 393, ll. 11-12). Further, Castro admitted Ashley was not his girlfriend. (R. 393, ll. 13-14). And finally, Castro admitted the confrontation with the victim was not his "beef" but Harry's. (R. 401).

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

Castro also admitted he lied to police during questioning about his involvement in the

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

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

Harry also admitted his brother Kason was a drug dealer; Castro was a drug dealer; Byrne was a drug dealer; another associate was a drug dealer, and implied Ashley was also a drug dealer. (R. 436, 441, 445, 462, 475-76, 488, 489, 493, 494, 500, 503). Harry’s testimony further established that the individuals surrounding him on the date in question and the days leading up to the murder, which included McPhail, Byrne, Castro, Ashley, and Evelyn [Ashley’s roommate], were repeatedly taking orders from him [Harry] or at the least acting at his direction. (R. 440, ll. 4-12; 448, ll. 2-13; 458, ll. 1-10, 498, 502-04).

Harry contradicted his own witness, Castro, denying the confrontation was over drugs or drug money, but claiming it was over the T.V. or money for the T.V. as the State’s witnesses

testified.¹² He also incredibly denied that any strong words were exchanged between the three (3) men and the victim. He admitted, in addition to being a drug dealer, that he is a rap musician who owned or operated several studios, and collaborated with Castro, another drug dealer, in the recording or record industry. (R. 441-42, 470, 474, 483, 500, 506). He also admitted he knew Castro had recently been arrested in possession of two (2) guns. (R. 499-500).

Harry admitted the first time he became aware Ashley had given the T.V. to another man, and not another woman, was on March 1, 2011, the day of the victim's murder. (R. 443-44). Harry admitted he had called the victim earlier in the evening and sought to meet him at a neutral location about the T.V. or money for the T.V., but the victim would not meet him. (R. 447, 483-90). Harry admitted he left the mobile home on the night of March 1, 2011, in McPhail's red truck, to meet Ashley around 9:00 p.m., while dark (R. 482-88). He admitted he met Ashley at Waccamaw Hospital on the *night* of March 1st; she got in *the truck* with him, and he did not go directly to the victim's home, which was nearby, but to the apartment where Castro resided. (R. 444).

While he denied the secret meeting with Castro as testified to by Byrne, he admitted that after going into Castro's apartment, Castro and Byrne followed him to the victim's residence in a separate vehicle. (R. 448-49, 507). He admitted the two (2) vehicles stopped at a convenience store before approaching the victim's home. (R. 449). He admitted when he arrived at the victim's home he parked in the victim's yard. (R. 450). He admitted he parked the truck in the victim's yard with the front of the truck facing the victim's house. (R. 480). He also admitted he, Castro, and Byrne approached the victim who was standing next to his [the victim's] own car in his

¹² Harry also conceded several times that the victim did not do anything to justify his murder. (R. 464, ll. 14-16; 466, ll. 2-25; 479, ll. 8-11).

[the victim's] own driveway. (R. 450-51). He admitted he had met the victim on a previous occasion, and at that time the victim expressed an interest in Ashley. (R. 452-53, 478). Harry admitted that on the night of the murder the victim told him [Harry] that he [the victim] had paid Ashley for the T.V. with cash and marijuana. (R. 453). Harry admitted Ashley then accused the victim of stealing the T.V. (R. 454). To which the victim responded that he had given Ashley money and marijuana for the T.V. (R. 455-56). Harry admitted he told Ashley to get back in the truck. (R. 456). Harry admitted Castro had his hand behind his back during the confrontation. (R. 505-06). He admitted Castro, the man he had brought to the scene, then shot the victim three (3) times with his .357 revolver. (R. 456).

Harry admitted all three (3) men, including himself, then got back in their vehicles, and he [Harry] directed Ashley to drive the red truck. (R. 457, 480). Harry admitted his vehicle led the way out of the subdivision just as it had led the vehicles to the victim's residence. (R. 457-58). Harry admitted Castro's vehicle followed his vehicle after they got out of the subdivision. (R. 458). Harry admitted he told Ashley to keep driving when the police blue lighted Castro's vehicle. (R. 459).

Harry admitted he fled from the red truck before the police were even able to stop it. (R. 498). He also admitted his cell-phone, which he had used to text Ashley and contact the victim shortly before the murder, disappeared during his flight from police. (R. 461-62, 500-01). Destruction or attempted destruction of evidence is evidence of guilt. Beckham, 334 S.C. 302, 513 S.E.2d 606; State v. Wells, 162 S.C. 509, 161 S.E. 177 (1931)(similar). Harry also admitted he was using marijuana the entire evening and night of the murder. And, he contradicted Castro, regarding the fact that Castro led the way out of the subdivision, testifying there was no question his vehicle, Harry's vehicle, led the way into and out of the victim's subdivision. (R. 457-58,

496).

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

He further admitted he owned no vehicles in his own name, but relied on his associates, such as Evelyn, Ashley, or McPhail for transportation. (R. 436-38, 503, 504). He further admitted he had no real job and the majority of his income came from selling drugs. (R. 470, 438). And, he further admitted he lied to police numerous times when questioned during the investigation. (R. 493, 503).

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

In summary, the defense' case allowed the State to present a complete and full picture of how and why the victim was murdered on the night of March 1, 2011. It further solidified the State's theory of the case that Harry was guilty of murder under the law of parties to a crime. Harry, a drug dealer, initiated and coordinated this entire crime including going and getting a man with a loaded .357 magnum pistol, who was also a drug dealer and fellow rap musician, to confront, intimidate, and coerce the victim into producing the T.V. or money, and if the victim did not comply with Harry's demands for the same, to assault, shoot, or kill the victim. Judge John did not err in denying the motion for a directed verdict. Hepburn, 406 S.C. at 429-42, 753 S.E.2d 402, *adopting* State v. Harry, 321 S.C. 273, 468 S.E.2d 76 (Ct. App. 1996); *Cf. State v.*

Thompkins, 220 S.C. 523, 68 S.E.2d 465 (1951)(citation omitted). As a result, the Court of Appeals was correct in affirming Judge John and Harry's conviction and sentence.

CONCLUSION

Judge John did not err, i.e. abuse his discretion, in denying the motion for a directed verdict because there was direct and/or substantial circumstantial evidence of Harry's guilt of murder under accomplice liability. As a result, the Court of Appeals correctly affirmed Judge John. For the foregoing reasons, the judgment, conviction, and sentence of the lower court should be affirmed, and the Court of Appeals must be affirmed.

Respectfully submitted,

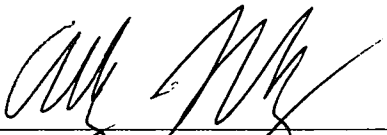
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August 29, 2016

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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AUG 29 2016

S.C. SUPREME COURT

On Certiorari to the Court of Appeals
Appeal from Horry County
Steven H. John, Circuit Court Judge

Appellate Case No. 2015-002161

THE STATE,

Appellant,

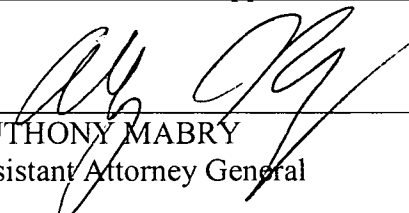
v.

KAREEM HARRY,

Respondent.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Brief of Respondent complies with Rule 211(b), SCACR, and the 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

August 29, 2016

CERTIFICATE OF SERVICE

I, **Anthony Mabry**, hereby certify that I have served the *Brief of Respondent* in the foregoing action by depositing copies in the United States Mail, postage prepaid, to Meliah Bowers Jefferson, Esquire WYCHE, P.A., 44 East Camperdown Way, Greenville, SC 29601 and by InterAgency Mail to Robert M. Dudek, Chief Appellate Defender, Division of Appellate Defense, 1330 Lady Street, Ste. 401, Columbia, SC 29201 this 29th day of August, 2016.



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S.C. SUPREME COURT