

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA,

vs.

RHAJON AKEEM SANDERS,

Defendant.

IN THE GENERAL SESSIONS COURT
NINTH JUDICIAL CIRCUIT

INDICTMENT Nos. 2015-GS-10-2684;

2015-GS-10-2685; 2016-GS-10-3318

MOTION FOR A NEW TRIAL

RECEIVED

AUG 29 2016

SC Court of Appeals

**TO: THE HONORABLE W. JEFFREY YOUNG, PRESIDING JUDGE AND
ASSISTANT SOLICITOR NINA SAVAS FOR NINTH CIRCUIT SOLITIOR'S OFFICE:**

NOW COMES THE DEFENDANT, Rhajon Akeem Sanders, by and through his
Counsels, Myesha Brown and Natasha Chisolm, moved the Honorable Court, pursuant to Rule
29 of the South Carolina Rules of Criminal Procedure seeking an Order to grant a new trial to the
Defendant for the reasons listed herein.

The Defendant asserts that in the interest of justice a new trial should be granted because
the there was no evidence to support the jury verdict, the Defendant's relevant evidence was
improperly rejected or excluded from the trial, the appropriate charges of the law were not
presented to the jury, the Assistant Solicitor's improper statements during closing remarks, and
other errors or irregularities.

The Defendant was charged with attempted murder and possession of a weapon during
the commission of a crime December 26, 2014. At the time of the Defendant's arrest, he
immediately informed law enforcement officers that arrived on scene that he fired his weapon
from his property after he noticed an unknown male in the dark approaching him and reaching
towards his waistband. After the Defendant fired his weapon, he aided the stranger and the
Defendant's family member contacted law enforcement and reported the shooting. Further, the

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Defendant offered his apologies to the stranger immediately following the shooting incident while waiting for law enforcement to arrive on scene. Upon law enforcement arrival, the Defendant informed the officers that he believed the victim had a weapon and was reaching for the weapon from his waistband at the time the Defendant fired his firearm. Prior to December 26, 2014, the Defendant had never been arrested or charged with a crime. The Defendant was gainfully employed and legally possessed his weapon on his property.

During the trial, the State of South Carolina offered no witnesses to refute the Defendant's state of mind at the time he fired his weapon. In fact, the State of South Carolina's witness and victim, Nicholas Washington testified that when the Defendant approached him after firing his weapon, he was nervous and very afraid. The State of South Carolina's witness, Katina Washington testified that after the shooting, the Defendant approached and apologized and was kind. No other witnesses offered any evidence to inform the jury of the Defendant's criminal intent or state of mind prior to the shooting incident or at the time of the shooting incident. During the trial, the Defendant and an eye witness, Ferantez Sanders both testified that prior to the shooting, they observed the victim approaching the Defendant and reaching towards his waistband. The State of South Carolina offered no evidence to refute the testimony of the Defendant or the eye-witness, Ferantez Sanders.

South Carolina Code 16-3-29 states: "A person, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder". The State of South Carolina failed to offer any evidence that demonstrates malice aforethought of the Defendant, which is essential in the charge attempted murder. The trial is void of any evidence that demonstrates malice aforethought. The jury's verdict should be set aside because no evidence was offered to support the conviction of attempted murder.

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The Defendant's counsels informed the Court that they were concerned that the Court's verbal and non-verbal conduct may improperly influenced the jury and that the jury may have concluded that the Court took a position on the case. The evidence submitted to the jury does not support a verdict of guilty for attempted murder. Defendant's counsels are concerned that the jury was improperly influenced by the Court's verbal and non-verbal conduct that resulted in the verdict rendered and for those reasons request that the Defendant is given a new trial. The Defendant's counsels expressed its concern during the trial and believe the Court's conduct may have improperly influenced the jury. When it is made to appear that anything has occurred, which may have improperly influenced the action of the jury, the accused should be granted a new trial, although he may appear to be ever so guilty, because it may be said that his guilt has been ascertained in the manner prescribed by the law". State v. Smith, 383 S.C. 159, 679 S.E.2d 176 (2009). Furthermore, there is no evidence to support a conviction of attempted murder. State vs. Smith, 316 S.C. 53, 447 S.E.2d 175 (1993).

During the trial, the Defendant's evidence of the community in which he lived and that formed his state of mind was improperly excluded. The Defendant proffered the evidence during the trial and the witnesses testified of numerous accounts of shooting incidents, burglaries, and robberies in the neighborhood and specifically on Kent Avenue, where this incident took place. The witnesses testified that the neighborhood has crime watch warnings and signage on Kent Avenue and throughout the community and that they are afraid of being a victim in that community. The Court improperly excluded any references to any acts of violence in the neighborhood and Kent Avenue by the witnesses. The Defendant's counsels informed the Court that the Defendant is incapable of offering a complete defense because the neighborhood in which he lived and witnessed violent acts helped formed his state of mind when he noticed an

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unknown male standing across the street in the dark and approaching him while reaching towards his waistband. The Defendant's inability to offer the evidence of the Defendant's neighborhood limited his ability to offer a complete defense during the trial and he was unable to properly respond to the Assistant Solicitor's inquiry as to the Defendant possessed a weapon on his porch. The State knew the Court prohibited the Defendant from making any references to violence in his neighborhood and prohibited the Defendant from stating his fear because of those violent acts witnessed. As a result of the Court's exclusion of the Defendant's evidence, the Assistant Solicitor left the jury with the impression that the Defendant's action was irresponsible because he possessed a weapon while on his porch. The Court's improper exclusion of relevant evidence left the Defendant in a position where he could not respond to the Assistant's Solicitor's references of a weapon on his person while on his property and unable to offer a complete defense during the trial. The Court's exclusion of the Defendant's evidence is a basis to grant a new trial.

The Defendant's counsels submitted eight (8) jury charges to the Court. The Court rejected three (3) of the jury charges requested. The Defendant argues that the self-defense act on appearances jury charges were improperly rejected. The Defendant's entire case was based on the observation of an eye-witness, Ferantez Sanders, and the Defendant's observations on December 26, 2014. The Defendant testified that he did not see a weapon, but that he believed the victim had a weapon because the victim was approaching him and reaching towards his waistband. Upon information and belief, the State's witness, MPO Michael Cook testified that his own firearm is located on his hip. The Defendant testified that his firearm was located on his hip or near his waistband. The State's witnesses, Office Stanley Tucker and Officer Shawn Perkins both testified that the Defendant fired his weapon when the victim was approaching him

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and reaching towards his waistband. The State and the Defendant offered testimony that the Defendant acted on his appearances. The self-defense act on appearances jury charge was improperly excluded and warrants the Defendant requests for a new trial.

During the closing remarks, the Assistant Solicitor made improper remarks to the jury. The Assistant Solicitor informed the jury panel that witness Ferantez Sanders testimony was tainted because he hired legal counsel. The Defendant objected to this improper statement to the jury and the Court overruled the objection. [See Transcript Pages 6-7 & 20-22 of Second Closing Statement by Ms. Savas- attached as Exhibit 'A']. The Assistant Solicitor's statement was improper and a misrepresentation of the facts. There was no evidence to suggest that the witness, Ferantez Sanders testimony was tainted. In fact, the witness, Ferantez Sanders testimony did not vary from the written statement provided December 26, 2014 and if the statement was inconsistent, the State would have impeached the witness with his inconsistent statement. The witness, Ferantez Sanders was not impeached by the State because his statement did not change. Nevertheless, the Assistant Solicitor improperly informed the jury panel without any basis or evidence in the record that the witness testimony was tainted. The improper statement of the Assistant Solicitor warrants a new trial.

During the closing remarks, the Assistant Solicitor informed the jury panel that witness, Ferantez Sanders testified that he never told the Defendant to shoot his gun. The Defendant's counsel objected to this incorrect statement and the Court overruled the objection citing that he thought he heard it. During cross examination, the State of South Carolina specifically asked witness, Ferantez Sanders whether he told his brother not to shot the victim and the witness clearly responded no. The witness responded that he never made such a comment. Nevertheless, the Assistant Solicitor during closing remarks told the jury that the witnesses said otherwise. The

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Assistant Solicitor's improper statement to the jury warrants a new trial. There were numerous improper statements offered by the Assistant Solicitor during the closing remarks to include informing the jury that the victim's leg was blown off, that Dr. Haro testified that the victim was in his yard when he was shot [Dr. Haro's testimony was that the victim said he was on the sidewalk when someone walked by and shot him], and that children were playing in the yard when the shots were fired. All of these statements were misrepresentation of the evidence offered during the trial. The improper statements of the solicitor are a ground for a new trial.

The Assistant Solicitor during the trial was observed coaching witnesses by nodding her head in agreement or disagreement with her witnesses while testifying. This improper conduct was brought to the Court's attention. The Assistant Solicitor's coaching of witnesses while testifying was improper, unethical and warrants the Defendant being granted a new trial.

Lastly, the Assistant Solicitor repeatedly informed the jury panel that no specific intent was required under the law to find the Defendant guilty of the charge attempted murder and argued that the fact the Defendant fired his weapon was the only evidence necessary to reach the verdict of guilty for attempted murder. Attempt is a specific intent crime. 21 Am.Jur.2d Criminal Law §176 (1998). The act constituting the attempt must be done with the intent to commit that particular crime." *Id.* Specific intent means that the defendant consciously intended the completion of acts comprising the choate offense. In other words, the completion of such acts is the defendant's purpose. United States v. Calloway, 116 F.3d 1129 (6th Cir. 1997). The State offered no evidence to that the Defendant had the specific intent to kill the victim. In fact, the State's own witnesses testified that the Defendant fired his weapon because he observed an unknown male approaching him and reaching towards his waistband and that the Defendant was

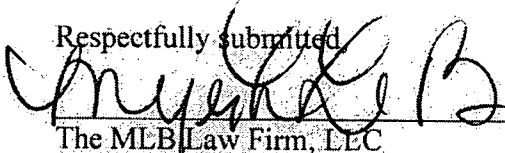
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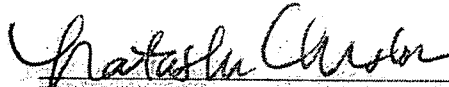
afraid and fired his weapon to protect himself. The Assistant Solicitor's improper statement of the law warrants the Defendant request for a new trial is granted.

THEREFORE, the Defendant requests that the Honorable Court grant the relief sought in this motion for a new trial in this matter.

Respectfully submitted



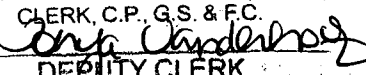
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Exhibit A

1 The reason that -- and every officer testified.
2 They do a portion of their job. So much of what happens,
3 there's so much going on, it's teamwork. Detective
4 Bailey said it. Nearly every officer testified it's
5 teamwork. When you get on the scene you've got several
6 officers. The sergeant says, You do this, you do this.
7 Crime scene comes, they do their role.

8 Rothhaus came out, that officer that testified he
9 detained the suspect. He didn't do nothing. He detained
10 the suspect who just shot someone. Okay. And I'll go
11 through and discuss again what they did but it's
12 important. It's a team effort. And the reason why the
13 officers don't know what other people did and we never
14 showed them is because you do not taint testimony, unlike
15 what happened with the defense's witnesses.

16 The defense's brother retained counsel who has been
17 sitting here every step of the way. The defense stated
18 that you are allowed --

19 MS. BROWN: Objection, Your Honor.

20 THE COURT: Overruled.

21 MS. SAVAS: And the Judge will charge you, you are
22 allowed to take the credibility of any witness before
23 you. You can assume all of their testimony is believable
24 or parts and pieces. Bias is important to take into
25 account. Bias. Okay. Bias that their attorney has been

1 sending questions, assisting, doing everything with the
2 defense every step of the way. Complete bias.

3 Tainted testimony. Not one person on the State's
4 case said they saw anything that they weren't supposed to
5 see, they weren't a part of each other's testimony.
6 That's the reason they were all outside and coming back
7 and forth, and I'll get into that, too.

8 Unfortunately, Nicholas isn't here today. Nicholas
9 sat before you and said he doesn't want to be here, it
10 makes him very uncomfortable. It's true. You heard him.
11 It is very uncomfortable. He is scared. He is scared
12 because he was shot by this man here.

13 He did his part. He told his truth and that is all
14 that is required of him, and that is fine. That is his
15 job. He does not need to continue to sit here to rehash
16 that horrific night where he was shot and nearly killed.
17 He does not need to sit there. That is the State's job.
18 That is my job, is to put forward the case, not the
19 victim to sit here through this again, and again, and
20 again when he lives with it every single day, and I can
21 promise that he does. That is fine.

22 He testified. He told his truth. Make note that
23 statement was consistent with everything he said the
24 night it happened. Consistency. Believability.

25 The fact that good people can do wrong doesn't make

1 honest lady. And Ms. Sanders is very observant about the
2 lighting outside, and she said and testified that 2311
3 and 2314, so that's Nicholas' aunty's and his grandma's
4 house, their porch lights were on, because they are
5 always on. Ms. Sanders said that. Ms. Sanders is not
6 lying.

7 She also said that she expresses a lot of concern.
8 She's close with her sons. Never expressed a single
9 concern about the neighbors across the street. There was
10 no issues, not anyone coming and going from the home.
11 They often have people coming and going. We know that.

12 Nicholas and his family go to his aunty's and
13 grandmother's house nearly every single day. There were
14 no concerns with those people there, not that day, not
15 ever until Rhajon started. She's, in fact, cordial with
16 the neighbors. There's good people. It's not an issue
17 here. She did say that Rhajon has matured a lot. It
18 wasn't -- it's an immaturity thing, is what she's saying.

19 Mr. Fernandez Sanders, the brother, he's a pretty
20 decent guy. Claims he's the older brother, he's a
21 protective older brother, and as a protective older
22 brother he's doing everything in his power to protect his
23 brother including lying on the stand. It's just what
24 happened. The statements changed. The statements
25 changed. The statements didn't say that the guy was

1 looking across the street to officers that night. We
2 never heard that until they coached him to do that on the
3 stand.

4 MS. BROWN: Objection, Your Honor.

5 THE COURT: Don't refer to what counsel did.

6 MS. SAVAS: Yes, sir.

7 THE COURT: Sustained.

8 MS. SAVAS: It's a desperate situation. Bias,
9 motive to lie. Ms. Sanders didn't lie. She said the
10 porch lights were on. Fernantez, the porch lights were
11 off. Mr. Fernantez was already outside. He was out
12 there for a good few hours. He said he was out there
13 from about four o'clock when he got home after picking
14 his brother up from work that day. He already saw
15 Nicholas outside. He didn't have an issue. No issue.

16 Nicholas is already standing outside smoking a
17 cigarette. Fernantez is on his phone just hanging out on
18 his porch. He never said that he was afraid of him that
19 night. He never expressed any concern to anyone. He was
20 just hanging out.

21 He knew people across the street had people over.
22 He said that. I asked him, Did you know that they had
23 people over?

24 Yeah. I saw people coming in and out all day.
25 They always do.

1 Wouldn't it be reasonable to assume that that man
2 in that front yard by them bushes are with the people
3 across the street? That's reasonable. He had no issue.
4 Fernantez had no issue with Nicholas. None whatsoever.
5 Never expressed one, never had one.

6 He doesn't own a gun. Fernantez lives at that same
7 house with Rhajon. He doesn't bring a gun out on the
8 porch. Rhajon said he brings a gun, a fully loaded gun
9 on his porch every single time he goes outside.

10 Now, is that unlawful? No. He's not on trial for
11 that. But it's strange. It's very, very strange that
12 you feel the need to bring a gun out every single time
13 you stand on your porch, yet your brother doesn't, who
14 also lives there, but your momma doesn't, who also lives
15 there. And your brother is on the porch without any
16 issue because you came out with a fully loaded gun and
17 you wanted to get hard and you walked down and you were
18 looking for trouble. The brother had no issues with the
19 victim already out there. Rhajon had an issue.

20 He also testified that he never told Rhajon to
21 shoot his gun. He said that no one told Rhajon to shoot
22 his gun --

23 MS. BROWN: Objection, Your Honor. It's not in the
24 record.

25 MS. SAVAS: It was --

1 MS. BROWN: He did not testify to that.

2 THE COURT: I thought I heard it. Overruled.

3 MS. SAVAS: Thank you, sir.

4 He said that from that chair. I never told him to
5 shoot the gun. No one told him to shoot the gun. That
6 decision was a wrong one made solely by Rhajon.

7 Fernantez never expressed a concern for his safety
8 or for his life until he testified, inconsistently
9 testified on the stand in this desperate hour to protect
10 his brother. Never once was that ever mentioned. But
11 what he did say, in his very candid calls and candidly on
12 the stand, was that this was a lesson for his brother to
13 learn because sometimes things happen and you do things
14 and you need to learn your lesson, all that that implies.
15 He didn't tell him to shoot him but he needs to learn his
16 lesson because it's wrong and he knew it was wrong.

17 Ms. Katina. Ms. Katina is a good mom. Ms. Katina
18 has five children. Ms. Katina has instilled work ethic
19 in her children and her son, Nicholas, and he is a good
20 man. He is a kind man, and he is a funny man as y'all
21 saw, and he works two full-time jobs. Two full-time
22 jobs. That means he just doesn't come home at three,
23 four o'clock and sit on the porch with a gun. That means
24 after that he changes, showers, and goes to his other job
25 at night because he wants to, because that's what his