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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appeal from Abbeville County
Honorable Frank R. Addy, Jr., Circuit Court Judge
Appellate Case No. 2015-002334

THE STATE,

Respondent,

vs.

KARLITA DESEAN PHILLIPS,

Appellant.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL 1

STATEMENT OF THE CASE 2

STATEMENT OF FACTS 3

ARGUMENT 11

I. The trial judge correctly granted Appellant a maximum of five peremptory challenges during the jury selection process because, based on the plain and unambiguous language of S.C. Code Ann. § 14-7-1110, a criminal defendant charged with the offenses with which Appellant was indicted is only entitled to five peremptory challenges when selecting a jury. 11

II. The trial judge properly denied Appellant's motion for a directed verdict because the evidence and testimony presented during Appellant's trial, when viewed in a light most favorable to the State as required, established Appellant's guilt for all the elements of accessory before the fact to murder and was sufficient to independently corroborate Appellant's statements to law enforcement such that all the evidence viewed collectively supported a reasonable belief Appellant acted as an accessory before the fact to the victim's murder. 17

CONCLUSION 25

TABLE OF AUTHORITIES

South Carolina Cases:

Brown v. State, 307 S.C. 465, 415 S.E.2d 811 (1992). 19, 23

City of Easley v. Portman, 327 S.C. 593, 490 S.E.2d 613 (Ct. App. 1997). 18

State v. Bailey, 273 S.C. 467, 257 S.E.2d 231 (1979). 14

State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2004). 20

State v. Dodd, 354 S.C. 13, 579 S.E.2d 331 (Ct. App. 2003). 19, 23

State v. Edwards, 173 S.C. 161, 178 S.E. 277 (1934). 19

State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002). 21

State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). 22, 24

State v. Harris, 340 S.C. 59, 530 S.E.2d 626 (2000). 11

State v. Landis, 362 S.C. 97, 606 S.E.2d 503 (Ct. App. 2004). 15

State v. Larmand, 415 S.C. 23, 780 S.E.2d 892 (2016). 24

State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924 (1955). 20

State v. Long, 325 S.C. 59, 480 S.E.2d 62 (1997). 19

State v. McCombs, 335 S.C. 123, 515 S.E.2d 547 (Ct. App. 1999). 17, 18

State v. Mills, 360 S.C. 621, 602 S.E.2d 750 (2004). 15

State v. Morgan, 352 S.C. 359, 574 S.E.2d 203 (Ct. App. 2002). 14

State v. Nix, 288 S.C. 492, 343 S.E.2d 627 (Ct. App. 1986). 21

State v. Osborne, 335 S.C. 172, 516 S.E.2d 201 (1999). 18, 23

State v. Owens, 293 S.C. 161, 359 S.E.2d 275 (1987). 19

State v. Parker, 381 S.C. 68, 671 S.E.2d 619 (Ct. App. 2008). 12

State v. Pitts, 296 S.C. 420, 182 S.E.2d 738 (1971). 24

State v. Pope, 9 S.C. 273 (1878). 16

State v. Powers, 331 S.C. 37, 501 S.E.2d 116 (1998). 12

State v. Prince, 316 S.C. 57, 447 S.E.2d 177 (1993). 21

State v. Robinson, 310 S.C. 535, 426 S.E.2d 317 (1992). 20

State v. Rogers, 263 S.C. 373, 210 S.E.2d 604 (1974). 12

State v. Russell, 345 S.C. 128, 546 S.E.2d 202 (Ct. App. 2001). 18

State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001). 18, 19

State v. Short, 333 S.C. 473, 511 S.E.2d 358 (1999). 13

State v. Strickland, 389 S.C. 210, 697 S.E.2d 681 (Ct. App. 2010). 24

State v. Thomas, 222 S.C. 484, 73 S.E.2d 722 (1952). 18, 20

State v. Weston, 367 S.C. 279, 625 S.E.2d 641 (2006). 20

State v. Williams, 321 S.C. 381, 468 S.E.2d 656 (1996). 17, 23

State v. Woods, 345 S.C. 583, 550 S.E.2d 282 (2001). 11

State v. Workman, 15 S.C. 540 (1881). 15

United States Supreme Court Cases:

Opper v. United States, 348 U.S. 84 (1954). 18

Rivera v. Illinois, 556 U.S. 148 (2009). 12, 13, 15

Ross v. Oklahoma, 487 U.S. 81 (1988). 12, 13

Smith v. United States, 348 U.S. 147 (1954). 18

United States v. Martinez-Salazar, 528 U.S. 304 (2000). 12, 16

Other State and Federal Cases:

Crawford v. United States, 375 F.2d 332 (D.C. Cir. 1967). 20, 21

Mazzell v. Evatt, 88 F.3d 263 (4th Cir. 1996). 21

People v. King, 271 Mich. App. 235, 721 N.W.2d 271 (Mich. Ct. App. 2006). 22

Other Authorities:

U.S. Const. amend. VI. 12

S.C. Const. art. I, § 14. 12

S.C. Code Ann. § 14-7-1110. ....13, 14

S.C. Code Ann. § 16-3-910. 14

S.C. Code Ann. § 16-9-10. 14

S.C. Code Ann. § 16-13-10. 14

STATEMENT OF ISSUE ON APPEAL

I.

The trial judge correctly granted Appellant a maximum of five peremptory challenges during the jury selection process because, based on the plain and unambiguous language of S.C. Code Ann. § 14-7-1110, a criminal defendant charged with the offenses with which Appellant was indicted is only entitled to five peremptory challenges when selecting a jury.

II.

The trial judge properly denied Appellant's motion for a directed verdict because the evidence and testimony presented during Appellant's trial, when viewed in a light most favorable to the State as required, established Appellant's guilt for all the elements of accessory before the fact to murder and was sufficient to independently corroborate Appellant's statements to law enforcement such that all the evidence viewed collectively supported a reasonable belief Appellant acted as an accessory before the fact to the victim's murder.

STATEMENT OF THE CASE

In December of 2013, Appellant Karlita Desean Phillips was arrested following an investigation into the shooting death of her estranged husband's brother. In May of 2014, the Abbeville County Grand Jury indicted Appellant for one count of accessory before the fact to murder and one count of using a minor to commit a felony. On July 20, 2015, a jury trial was commenced in the Abbeville County Court of General Sessions with the Honorable Frank R. Addy, Jr., circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to concurrent terms of imprisonment of life for accessory before the fact to murder and fifteen years for using a minor to commit a felony. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

On the night of March 25, 2013, Dale Phillips, Sr. was watching television in his home located in Abbeville, South Carolina, while his wife, Martha Phillips, cooked dinner for Jamil Phillips, one of their three sons. (R. pp. 47-51; pp. 60-63). That night, Jamil was scheduled to finish working at his job in Greenville, South Carolina, at 9:00 p.m., and Martha and Dale, Sr. were expecting him to arrive home around 10:00 p.m. (R. p. 51; p. 64). Likewise, they were expecting one of their other sons, Dale Phillips, Jr., to also arrive home from work around that same time. (R. p. 52; p. 64).

Just after 10:00 p.m., Martha heard one of their sons arrive home and put a key into the door. (R. p. 51; p. 64). Immediately after that, several gunshots rang out, and Martha and Dale, Sr. quickly rushed to their front porch to see what was going on. (R. pp. 51-52; p. 65). When they did so, they found Jamil lying face down on the porch trying to catch his breath and suffering from gunshot wounds.[1] (R. p. 53; p. 65). At that same time, Martha and Dale, Sr. heard someone running away from the home and, shortly after that, observed a car speed off from the area.[2] (R. p. 54; p. 67). Martha then quickly called 911 while Dale, Sr. held Jamil, who was crying and gurgling, and tried to comfort him until help could arrive. (R. p. 53; p. 65). However, within just a few minutes, Jamil stopped breathing and died in his father's arms before paramedics were able to make it to their location.[3] (R. p. 53; p. 55; p. 66; p. 68).

[1] Initially, Martha believed Jamil was Dale, Jr. due to the fact Dale, Jr. was going through a contentious divorce at the time. (R. p. 52; p. 65; p. 68).

[2] On the night of the shooting, Martha and Dale, Sr.'s neighbors noticed a light-colored car parked next to a wooded area near Martha and Dale, Sr.'s home and observed the same car speeding away from the area shortly after the shooting occurred. (R. pp. 70-72; pp. 74-81).

[3] During trial, Dr. Brett Woodard, the expert forensic pathologist who conducted Jamil's autopsy, testified Jamil had gunshot wounds to his forehead, armpit, and hip. (R. p. 128; pp. 130-132). He further explained the bullet that struck Jamil's armpit travelled through Jamil's lungs and aorta and rapidly led to his death by causing fatal hemorrhaging and blood loss. (R. pp. 135-137).

Shortly thereafter, law enforcement officers from the Abbeville County Sheriff's Office arrived on the scene along with emergency medical personnel, the scene was secured, and the paramedics unsuccessfully attempted to revive Jamil. (R. p. 84; p. 88; p. 90; p. 92; p. 94). Crime scene investigators then arrived at the scene, discovered and collected fresh cigarette butts that had been left at a nearby wooded area, located tire marks in the same area, and took impressions of those marks. (R. pp. 96-97; pp. 105-107; p. 119; pp. 240-242). Additionally, Detective Nick Marshall from the Abbeville County Sheriff's Office interviewed witnesses and family members at the scene and learned a silver or light-colored car was believed to have been involved in the shooting. (R. pp. 143-147). Furthermore, based on the information he gathered, Detective Marshall determined Appellant Karlita Desean Phillips, who was the estranged wife of Dale, Jr., was a person of interest in the investigation based on the fact she drove a car similar to the one observed speeding away from the scene.[4] (R. pp. 146-148; pp. 242-243; p. 301; p. 303).

In response, Detective Marshall travelled to Appellant's apartment in Greenwood, South Carolina, along with Investigator Michael Collins from SLED. (R. p. 148; p. 240; pp. 243-244). Upon arriving, the investigators observed Appellant's light-colored Toyota Camry parked in front of her apartment and noticed the vehicle had what appeared to be fresh mud on its wheels and side. (R. p. 108; p. 149; pp. 242-245; p. 249). Additionally, the investigators noticed the lights were on inside of Appellant's apartment, but someone turned the lights off shortly after they arrived at the scene. (R. pp. 151-152; pp. 244-245). The investigators then attempted to make contact with whoever was inside, but no one responded to their knocks or requests. (R. pp. 151-152; p. 245). However, shortly thereafter, a local police officer was dispatched to the scene in response to a 911 call placed by Appellant, and Appellant allowed the investigators to enter her home once the officer arrived on the scene. (R. p. 152; pp. 245-247). The investigators then

[4] Appellant was thirty-nine years old at the time of the shooting. (R. p. 170).

informed Appellant of her rights and spoke with her about the shooting. (R. pp. 153-155; p. 247). During the conversation, Appellant denied any involvement in Jamil's death and prepared a written statement indicating she did not go to Abbeville on the date of the shooting, she did not have any knowledge of the shooting, and no one borrowed her car that night. (R. pp. 155-156; pp. 248-249; p. 422).

Following the interview, the investigators took custody of Appellant's car and obtained a warrant to search the vehicle. (R. p. 250). Tire impressions were then taken from the car and compared to the tire impressions collected at the scene, and Agent Vickie Hallman, a crime scene investigator from SLED and an expert in tire impressions, determined one of the tire impressions from the scene could have been made by Appellant's car, which she noticed had mud and dirt on its tires. (R. pp. 96-97 p. 101; pp. 116-119). However, she was unable to conclusively determine Appellant's car left that impression. (R. p. 120).

Subsequently, the investigation into Jamil's murder continued but did not lead to any arrests until Tavarious Settles, a juvenile who had been involved in a murder in Greenwood a few days after Jamil was shot and killed, was connected to the shooting through a DNA analysis of the cigarette butts collected from the crime scene.[5] (R. pp. 105-106; pp. 139-141; p. 197; p. 201; p. 204; p. 209; p. 338; p. 339; p. 345). After the connection was made, investigators met with Settles on December 10, 2013, and spoke with him about the crime. (R. pp. 348-349). During the interview, Settles denied any involvement in Jamil's killing but indicated Appellant had made an offer to him in regard to the crime. (R. pp. 348-349; p. 354). Additionally, Settles insisted he declined the offer and stated he informed a friend about it before providing the friend with Appellant's contact information. (R. pp. 349-350). Furthermore, Settles stated his friend committed the murder and framed him by planting the cigarette butts at the scene. (R. p. 351).

[5] Settles was sixteen years old at the time of Jamil's killing. (R. p. 169; p. 338).

Based on Settles's statements coupled with the other evidence obtained during the investigation, Appellant was placed under arrest for using a minor to commit a felony. (R. pp. 252-253). Following her arrest, officers interviewed her for several hours on the afternoon of December 18, 2013. (R. p. 157; p. 161; p. 172). During that interview, Appellant waived her rights, admitted she knew Settles through her daughter, stated she had told her daughter she wanted Dale, Jr. to be dead, and indicated she let Settles use her car on the night of the shooting while claiming he left in it with an individual named "Mike." (R. p. 175; p. 179; pp. 259-262). Furthermore, Appellant admitted she had talked to someone about "jumping" Dale, Jr. and indicated she believed her daughter asked Settles to commit the crime. (R. p. 271; p. 273).

Then, on the following morning, officers interviewed Appellant again and she again waived her rights before speaking with the officers. (R. pp. 263-265). During that interview, Appellant provided a written statement in which she indicated her car was only used to go to the store on the night of the incident, claimed she had said "things" in "the heat of the moment" but had never spoken of them again, denied driving Settles to Abbeville, denied going to Abbeville herself, blamed the incident all on Settles and "Mike," and insisted she never asked Settles to commit murder or do anything that involved going to Abbeville on the date of the incident. (R. pp. 265-268; pp. 423-426). However, Appellant also inconsistently wrote she "took him to house" and "got the ball rolling" while again insisting she did not force or tell Settles to do "anything." (R. p. 268; p. 270; pp. 423-426).

Thereafter, on December 20, 2013, Lieutenant Bo Barton from SLED interviewed Appellant again after reviewing her prior written statements. (R. pp. 276-279). During the interview, Appellant again waived her rights and provided the investigator with an additional written statement. (R. p. 280; p. 283). In that statement, Appellant indicated she went to the

store, gave her daughter a driving lesson, and got a car wash on the night of the incident. (R. pp. 288-290; pp. 427-428). She further insisted both she and her car were in Greenwood as opposed to Abbeville on the date of the shooting. (R. pp. 290-291; pp. 427-428). After Appellant finished her statement, Lieutenant Barton called a number of inconsistencies to her attention. (R. p. 292). Appellant then prepared a final written statement. (R. p. 280; p. 294). In that statement, Appellant indicted she believed Dale, Jr. had burglarized her apartment, asked Settles to beat him up in response, provided Settles with directions to Dale, Jr.'s home, and let Settles borrow her car on the night of the incident. (R. pp. 294-296; pp. 429-430). After that, Appellant indicated Settles returned the car and she later learned Jamil had been killed instead of Dale, Jr. (R. p. 296; pp. 429-430).

Subsequently, Appellant was indicted for accessory before the fact to murder and using a minor to commit a felony, and she proceeded forward to trial. (R. p. 2; pp. 416-421). At the outset of trial, the trial judge conducted the jury selection process and indicated the defense would be entitled to ten peremptory challenges while the State would be entitled to five. (R. p. 20). However, after holding a sidebar with the parties, the trial judge realized the defense was only statutorily entitled to five peremptory challenges and corrected the parties on that matter. (R. p. 21). Thereafter, the jury selection process was conducted, a jury was selected for the trial, and neither the defense nor the State exhausted all of their peremptory challenges in doing so. (R. pp. 21-26).

Once a jury was selected, the trial judge indicated a matter needed to be placed on the record, and defense counsel indicated she had raised an objection during the jury selection process because she believed the defense was entitled to ten peremptory challenges instead of five. (R. pp. 31-32). In support of that position, defense counsel asserted the defense should

have been granted ten peremptory challenges because the indicted offense of accessory before the fact to murder carried the same penalty as murder, which was an offense for which the defense would have been statutorily entitled to ten peremptory challenges. (R. p. 32). Defense counsel further contended there were jurors seated on the jury the defense would have stricken if it had more peremptory challenges available and maintained the defense was saving one strike for a specific individual who was not called during the selection process.[6] (R. pp. 32-33). However, defense counsel conceded the defense did not exhaust all available peremptory challenges in selecting the jury. (R. pp. 32-33). Regarding the matter, the trial judge confirmed he showed defense counsel the statutory provision that established the defense was not entitled to ten peremptory challenges in Appellant's case, noted defense counsel's objection for the record, and proceeded forward with the trial. (R. pp. 32-33).

Subsequently, during trial, Martha and Dale, Sr. recounted the horrific events they experienced on the night of March 25, 2013, and the investigators and other law enforcement personnel who responded on the night of the shooting discussed the details of their ensuing investigation into Jamil's killing, which culminated in the arrests of Settles and Appellant for their involvement in the crime after Appellant gave a number of differing statements. (R. pp. 46-58; pp. 60-68; pp. 84-88; pp. 96-126; pp. 143-186; pp. 195-209; pp. 240-253; pp. 258-273; pp. 276-296). Additionally, two of Settles's cousins indicated Settles was engaged in a sexual relationship with Appellant around the time of the killing, and, significantly, Ashanti Polk, who formerly dated Settles, recounted Settles admitted to her he was cheating on her with Appellant and had killed Jamil after "his friend" drove him to the crime scene. (R. pp. 226-237).

[6] Specifically, defense counsel stated the defense would have exercised a peremptory strike on one particular juror who was allegedly seated on the jury based on the fact the juror's grandfather was formerly the Abbeville County Sheriff. (R. pp. 26-27). Notably though, the juror who indicated her grandfather was formerly the Abbeville County Sheriff was neither called during the jury selection process nor seated on the jury. (R. p. 15; pp. 21-26).

Furthermore, testimony was presented establishing Appellant would have received the proceeds from Dale, Jr.'s $500,000 life insurance policy, which Dale, Jr. indicated Appellant was fully aware of, and personally renewed a $25,000 life insurance policy on Dale, Jr. several months after the two had separated. (R. pp. 301-306; pp. 311-313).

In addition to that testimony and evidence, Settles elected to testify for the prosecution and candidly admitted he shot and killed Jamil on the night of the crime while attempting to kill his intended target, Appellant's husband, at the request of Appellant, who was engaged in a sexual relationship with him at the time. (R. pp. 338-340). Regarding his motive for the shooting, Settles indicated Appellant asked him to kill her husband because she wanted insurance money and offered him $13,000 to commit the killing. (R. p. 340). He further stated Appellant drove him to the scene of the crime in her car, he waited for his victim to arrive home while hiding in some bushes and smoking cigarettes, and he shot and killed Jamil after Jamil walked onto the front porch of his home. (R. pp. 341-342). After that, he indicated they fled from the area and Appellant later informed him he killed the wrong person. (R. p. 342).

Thereafter, at the conclusion of the evidentiary phase of trial, defense counsel moved for a directed verdict on both charges. (R. pp. 354-356). In regard to the accessory before the fact charge, defense counsel argued no evidence had been presented to establish Appellant was not present at the scene of the shooting and contended the State was required to prove she was absent at the time without relying on her statement in any way based on the requirements of the corpus delicti rule. (R. pp. 356-357; pp. 359-360). Similarly, in regard to the using a minor to commit a felony charge, defense counsel generally contended the evidence that had been presented was insufficient to prove that charge. (R. p. 357). In response, the solicitor contended the evidence presented during trial other than Appellant's statements was sufficient to establish Appellant was

guilty of the charged offenses and was not present at the scene of the shooting. (R. pp. 358-359). Furthermore, the solicitor asserted Appellant's statements directly established she was not present at the scene of the crime and, when taken together with the other evidence presented during trial establishing the crime had occurred, constituted sufficient evidence to require submission of the case to the jury. (R. p. 359). After considering the arguments of counsel, the trial judge denied the directed verdict motion as to both charges and concluded there was evidence even independent from Appellant's statements from which the jury could find Appellant was not present at the time of Jamil's killing. (R. p. 360).

Subsequently, at the conclusion of trial, the jury convicted Appellant of both indicted offenses. (R. p. 412). Following the verdict, the trial judge sentenced Appellant to life imprisonment for accessory before the fact to murder along with a concurrent term of imprisonment of fifteen years for using a minor to commit a felony. (R. pp. 414-415).

ARGUMENT

I.

The trial judge correctly granted Appellant a maximum of five peremptory challenges during the jury selection process because, based on the plain and unambiguous language of S.C. Code Ann. § 14-7-1110, a criminal defendant charged with the offenses with which Appellant was indicted is only entitled to five peremptory challenges when selecting a jury.

Appellant contends the trial judge erred by granting her only five peremptory challenges during the jury selection process as opposed to ten. In support of that contention, Appellant quotes the pertinent language from Section 14-7-1110 of the South Carolina Code of Laws that does **not** identify the offenses with which she was charged as offenses for which she would have been entitled to ten peremptory challenges while nonetheless maintaining she should have received ten peremptory challenges in light of the fact accessory before the fact to murder carries the same penalty as murder, which is an offense for which a criminal defendant in South Carolina would, in fact, be entitled to ten peremptory challenges. Significantly, based directly on the clear and unambiguous statutory language quoted by Appellant in support of her argument on appeal, the trial judge committed no error in granting Appellant a maximum of five peremptory challenges during the jury selection process as Appellant was **not** charged with any offenses identified by the legislature in Section 14-7-1110 as offenses for which a criminal defendant in our state would be entitled to ten peremptory challenges. Accordingly, Appellant's challenge to the manner in which the jury was selected in her case is wholly lacking in merit. Appellant's convictions should be affirmed.

In every criminal case tried in South Carolina, a defendant has a constitutional right to a fair trial. State v. Woods, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001); see State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 627 (2000) ("The Sixth and Fourteenth Amendments of the

United States Constitution guarantee a defendant a fair trial by a panel of impartial and indifferent jurors."). That right guarantees to a defendant a trial by a panel of impartial, indifferent jurors. State v. Parker, 381 S.C. 68, 96, 671 S.E.2d 619, 633 (Ct. App. 2008); see U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury[.]"); S.C. Const. art. I, § 14 ("The right to trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury[.]"); see also State v. Rogers, 263 S.C. 373, 382, 210 S.E.2d 604, 609 (1974) ("[T]he law is well settled that the defendant has no right to a trial by any particular jury or jurors and has the right only to a trial by a competent and impartial jury."). Importantly, it is the duty of the trial judge to ensure a jury comprised solely of fair, impartial, and unbiased jurors ultimately decides a defendant's case. State v. Powers, 331 S.C. 37, 43, 501 S.E.2d 116, 119 (1998).

One mechanism used by courts to secure a criminal defendant's right to a fair trial is the peremptory challenge. United States v. Martinez-Salazar, 528 U.S. 304, 316 (2000); see Ross v. Oklahoma, 487 U.S. 81, 88 (1988) ("[Peremptory challenges] are a means to achieve the end of an impartial jury."). Notably, "[t]he peremptory challenge is part of our common-law heritage." Martinez-Salazar, 528 U.S. at 311. However, peremptory challenges are not constitutionally required in order for a defendant to receive a fair trial, and, thus, states are **not** mandated to grant defendants peremptory challenges during the jury selection process. See id. ("[S]uch challenges are auxiliary; unlike the right to an impartial jury guaranteed by the Sixth Amendment, peremptory challenges are not of federal constitutional dimension."); see Rivera v. Illinois, 556 U.S. 148, 152 (2009) (recognizing states may withhold peremptory challenges entirely without infringing on a defendant's constitutional rights). As a result, "it is for the State to determine the

number of peremptory challenges allowed and to define their purpose and the manner of their exercise." Ross, 487 U.S. at 89; see Rivera, 556 U.S. at 152 ("The right to exercise peremptory challenges in state court is determined by state law.").

In South Carolina, our legislature has mandated any defendant charged with the crimes of "murder, manslaughter, burglary, arson, criminal sexual conduct, armed robbery, grand larceny, . . . breach of trust when it is punishable as for grand larceny, perjury, or forgery" is entitled to exercise up to ten peremptory challenges during the jury selection process. S.C. Code Ann. § 14-7-1110. Moreover, our legislature has mandated any defendant charged with any crime or offense **other** than the ones it specifically identified as warranting ten peremptory challenges only has a right to no more than five peremptory challenges. Id. Significantly, a trial judge is not permitted to deny or impair a defendant's right to a peremptory challenge in South Carolina, and "no showing of actual prejudice is required to find reversible error" if such a denial or impairment occurs. State v. Short, 333 S.C. 473, 477, 511 S.E.2d 358, 360 (1999); see Ross, 487 U.S. at 89 ("[T]he 'right' to peremptory challenges is 'denied or impaired' only if the defendant does not receive that which state law provides."). However, "[b]efore reversible error can be found, the complaining party must of course establish the denial of his right to exercise a peremptory challenge." Short, 333 S.C. at 478, 511 S.E.2d at 361.

In the case sub judice, Appellant was not charged with "murder, manslaughter, burglary, arson, criminal sexual conduct, armed robbery, grand larceny, . . . breach of trust when it is punishable as for grand larceny, perjury, or forgery[.]" S.C. Code Ann. § 14-7-1110. Instead, she was charged with accessory before the fact to murder and using a minor to commit a felony. As neither of those offenses was murder, manslaughter, burglary, arson, criminal sexual conduct, armed robbery, grand larceny, breach of trust when it is punishable as for grand larceny, perjury,

or forgery, Appellant was **not** statutorily entitled to ten peremptory challenges based on the plain and unambiguous language of Section 14-7-1110. See id. ("Any person who is indicted for any crime or offenses **other than** [murder, manslaughter, burglary, arson, criminal sexual conduct, armed robbery, grand larceny, breach of trust when it is punishable as for grand larceny, perjury, or forgery] has the right to peremptory challenges **not exceeding five**[.]" (emphasis added)); see also State v. Morgan, 352 S.C. 359, 366-367, 574 S.E.2d 203, 206-207 (Ct. App. 2002) ("If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no need to employ rules of statutory interpretation and the court has no right to look for or impose another meaning.").

In arguing to the contrary on appeal, Appellant notes accessory before the fact to murder carries the same penalty as murder and, for that reason, asserts she should have been entitled to more peremptory challenges than she received. Importantly though, the legislature in South Carolina has **not** mandated criminal defendants are entitled to more peremptory challenges based on the length of the potential punishment they are facing and, instead, has elected to enumerate specific offenses for which it believes more peremptory challenges are warranted.[7] See State v. Bailey, 273 S.C. 467, 469, 257 S.E.2d 231, 232 (1979) (" 'Generally speaking, peremptory challenges arise from the exercise of a privilege granted by the legislative authority. They are allowed by legislatures as an act of grace, rest entirely within the discretion of legislatures, can be exercised as a matter of right only to the extent allowed by statute, and **must be taken subject to the legislative limitations placed upon the manner of their exercise**.' " (emphasis

[7] Notably, kidnapping, which is an offense **not** enumerated in Section 14-7-1110 as an offense warranting ten peremptory challenges, carries a much higher potential penalty than offenses such as perjury and forgery, which are offenses that are specifically enumerated in the statute as offenses warranting ten peremptory challenges. See S.C. Code Ann. § 16-3-910 (authorizing the imposition of up to a thirty-year term of imprisonment for kidnapping); S.C. Code Ann. § 16-9-10 (authorizing the imposition of either a fine, up to a five-year term of imprisonment, or both for the most serious version of perjury); S.C. Code Ann. § 16-13-10 (authorizing the imposition of either a fine, up to a ten-year term of imprisonment, or both for the most serious version of forgery).

added and citation omitted)); see also Rivera, 556 U.S. at 152 (recognizing "state law controls the existence and exercise of peremptory challenges"). Accordingly, Appellant was not entitled to more peremptory challenges during her trial based on the potential penalty she was facing.

Furthermore, in arguing the trial judge erred in conducting the jury selection process, Appellant appears to suggest she was entitled to more peremptory challenges in light of the fact penal statutes are required to be strictly construed in favor of the defendant pursuant to our rules of statutory construction. Notably though, the pertinent language of Section 14-7-1110 clearly and unambiguously indicates the offenses with which Appellant was charged only entitled her to five peremptory challenges during the jury selection process. See State v. Mills, 360 S.C. 621, 624, 602 S.E.2d 750, 752 (2004) ("Although a penal statute must be strictly construed against the State, when the terms of the statute are clear and unambiguous, [the court] is constrained to give them their literal meaning."); State v. Landis, 362 S.C. 97, 102, 606 S.E.2d 503, 505 (Ct. App. 2004) ("The legislature's intent should be ascertained primarily from the plain language of the statute. . . . This Court must apply clear and unambiguous terms of a statute according to their literal meaning." (citations omitted)). As a result, the trial judge properly applied that statutory language in limiting Appellant to a maximum of five peremptory challenges during trial.

Because the trial judge properly granted Appellant a maximum of five peremptory challenges, which was all she was entitled to based on the plain and unambiguous language of Section 14-7-1110, the trial judge committed no error in conducting the jury selection process in Appellant's case and did not deny or impair Appellant's right to peremptory challenges in any manner. Cf. State v. Workman, 15 S.C. 540, 543-544 (1881) ("It is very clear that the prisoners were properly restricted to five peremptory challenges each. The statute designates specifically the cases in which twenty peremptory challenges are allowed, and declares that in other cases the

right of peremptory challenge of the part of the accused shall be limited to five. The offence for which these defendants were indicted does not fall within any of the classes in which twenty peremptory challenges are allowed." (citation omitted)); State v. Pope, 9 S.C. 273, 274-275 (1878) (holding Pope **clearly** was not entitled to the twenty peremptory challenges to which defendants charged with arson were statutorily entitled because Pope was not charged with arson as contemplated by the peremptory challenge statute in effect at the time of his trial). Accordingly, Appellant has wholly failed to establish she was entitled to a reversal of her conviction based upon the manner in which the jury was selected in her case. See Martinez-Salazar, 528 U.S. at 317 (recognizing Martinez-Sálazar was not entitled to a reversal of his conviction where he received precisely what the law provided in regard to the number of peremptory challenges during the jury selection process). Appellant's convictions should be affirmed.

II.

The trial judge properly denied Appellant's motion for a directed verdict because the evidence and testimony presented during Appellant's trial, when viewed in a light most favorable to the State as required, established Appellant's guilt for all the elements of accessory before the fact to murder and was sufficient to independently corroborate Appellant's statements to law enforcement such that all the evidence viewed collectively supported a reasonable belief Appellant acted as an accessory before the fact to the victim's murder.

Appellant contends the trial judge erred by refusing to grant her motion for a directed verdict as to the charge of accessory before the fact to murder. In support of that contention, Appellant maintains she was, in fact, present at the scene of the murder and appears to be suggesting no evidence was presented to establish she was not actually present at the scene of crime other than her own statements. However, contrary to Appellant's contentions, the State presented evidence and testimony establishing each element of the charged offense of accessory before the fact to murder, including evidence and testimony that was sufficient to independently corroborate Appellant's statements indicating she was not present at the scene of the crime. As a result, the trial judge properly denied Appellant's directed verdict motion and submitted the case to the jury for resolution of the factual disputes raised by the evidence. Appellant's convictions should be affirmed.

In a criminal case in South Carolina, the prosecution must present some proof of the corpus delicti of the charged offense before the case can be submitted to the jury. State v. McCombs, 335 S.C. 123, 126, 515 S.E.2d 547, 548 (Ct. App. 1999). Significantly, "[a] conviction cannot be had on the extra-judicial confessions of the defendant unless corroborated by proof aliunde of the corpus delicti." State v. Williams, 321 S.C. 381, 384, 468 S.E.2d 656, 657 (1996). That "rule with regard to the proof of the *corpus delicti*, apart from the mere confession of the accused, proceeds upon the theory that the general fact, without which there

could be no guilt in the accused or in anyone else, must be established before anyone could be convicted of the alleged criminal act which caused it; for otherwise, the accused might be convicted when there was no criminal agency involved." State v. Thomas, 222 S.C. 484, 486-487, 73 S.E.2d 722, 723 (1952); see also City of Easley v. Portman, 327 S.C. 593, 596, 490 S.E.2d 613, 615 (Ct. App. 1997) ("Independent proof of the defendant's identity as the guilty party is not required to prove the *corpus delicti*.").

Importantly, **some** proof of the corpus delicti must come from a source other than the defendant's out-of-court statements. State v. Saltz, 346 S.C. 114, 137, 551 S.E.2d 240, 253 (2001); see Opper v. United States, 348 U.S. 84, 93 (1954) ("[T]he corroborative evidence need not be sufficient, independent of the statements, to establish the *corpus delicti*."). However, the proof necessary to satisfy that requirement may be sufficient even where the evidence is circumstantial or presumptive if it is the best evidence obtainable. McCombs, 335 S.C. at 126, 515 S.E.2d at 548. Moreover, "the corroboration rule is satisfied if the State provides sufficient independent evidence which serves to corroborate the defendant's extra-judicial statements and, **together with such statements**, permits a reasonable belief that the crime occurred." State v. Osborne, 335 S.C. 172, 180, 516 S.E.2d 201, 205 (1999) (emphasis added)). Notably, "[i]f the statement is independently corroborated, then **the combination of** the statement and the State's remaining evidence may be considered by the trial court to determine if there is any evidence tending to establish the *corpus delicti*." State v. Russell, 345 S.C. 128, 132-133, 546 S.E.2d 202, 205 (Ct. App. 2001) (emphasis added); see Smith v. United States, 348 U.S. 147, 156 (1954) ("[C]orroborative evidence does not have to prove the offense beyond a reasonable doubt, or even by a preponderance, as long as there is substantial independent evidence that the offense

has been committed, and the evidence as a whole proves beyond a reasonable doubt that defendant is guilty.").

In a case involving a homicide, the corpus delicti of the offense generally consists of two elements: (1) the death of a human being; and (2) the criminal act of another causing the death. Brown v. State, 307 S.C. 465, 467, 415 S.E.2d 811, 812 (1992). Like other offenses, the corpus delicti of a homicide may be established by circumstantial evidence when it is the best evidence obtainable. Saltz, 346 S.C. at 137, 551 S.E.2d at 252. Furthermore, circumstantial evidence may be sufficient to establish the corpus delicti even if the cause of death cannot be determined. Brown, 307 S.C. at 467-468, 415 S.E.2d at 812; see generally State v. Owens, 293 S.C. 161, 168, 359 S.E.2d 275, 278 (1987) (finding sufficient circumstantial evidence of the corpus delicti of murder independent of Owens's inculpatory statements where the victim's body was never discovered but the victim's personal habits and relationships established his sudden disappearance was most likely not a voluntary act).

Critically, if there is any evidence presented tending to establish the corpus delicti of the charged offense, it is the trial judge's **duty** to pass that question on to the jury. State v. Dodd, 354 S.C. 13, 18, 579 S.E.2d 331, 334 (Ct. App. 2003). Thus, when presented with a motion for a directed verdict in a case where a corpus delicti argument is raised, the trial judge – just like in any other criminal case – is concerned with the existence or non-existence of evidence and not its weight. State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997); see State v. Edwards, 173 S.C. 161, 165, 178 S.E. 277, 278 (1934) ("[The appellate court is] not here to determine the sufficiency of the evidence to justify the jury's verdict . . . ; but [the appellate court is] concerned only with the question as to the sufficiency of that evidence to require the trial Judge to submit the issue of criminal agency to the jury."). The trial judge should deny a directed verdict motion

and submit the case to the jury if there is any substantial evidence reasonably tending to prove the guilt of the accused or from which guilt may be fairly or logically deduced. State v. Robinson, 310 S.C. 535, 538, 426 S.E.2d 317, 319 (1992); see State v. Littlejohn, 228 S.C. 324, 329, 89 S.E.2d 924, 926 (1955) ("[O]n a motion for direction of verdict, the trial judge is concerned with the existence or non-existence of evidence, not with its weight; and, although he should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced."); Thomas, 222 S.C. at 487, 73 S.E.2d at 723-724 (" 'When there is any evidence, however slight, on which the jury may justifiably find the existence or the non-existence of material facts in issue, or if the evidence is of such character that different conclusions as to such facts reasonably may be drawn therefrom, the issues should be submitted to the jury.' " (citation omitted)); see also Crawford v. United States, 375 F.2d 332, 334 (D.C. Cir. 1967) ("The jury question of whether there was proof of guilt beyond a reasonable doubt presents a stricter or higher standard than the trial court's consideration of whether there is sufficient evidence to allow the jury to find guilt beyond a reasonable doubt, and it rests in the unreviewable ratiocinations of twelve reasonable persons whose deliberations are protected by the highest security.").

On appeal from the denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If there is **any** direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must affirm the trial judge's ruling. State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478

(2004). The appellate court may only reverse the trial judge's denial of a directed verdict motion if there is no evidence supporting the trial judge's ruling. State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002). "[U]nless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986); see also Crawford, 375 F.2d at 334 ("It is not the function of appellate judges to weigh the evidence and decide that if they had doubts other reasonable persons were compelled to have the same doubts. If that were the test the jury of twelve would be relegated to the very low grade function of secondary fact finders.").

In the case at bar, Appellant was indicted for accessory before the fact to murder and using a minor to commit a felony but has only challenged on appeal the sufficiency of the evidence in regard to the accessory charge. In order to prove the offense of accessory before the fact to murder, the State is required to prove: (1) the accused "either advised and agreed, urged, or in some way aided" another person to commit the offense of murder; (2) the accused was not present when the murder was committed; and (3) the murder was committed by some other person. State v. Prince, 316 S.C. 57, 64, 447 S.E.2d 177, 181 (1993); see Mazzell v. Evatt, 88 F.3d 263, 267 (4th Cir. 1996) ("[A]n accessory before the fact cannot be present at the scene."). Thus, in order for the State to prove Appellant's guilt for the accessory charge, the State was required to show Appellant advised, urged, or aided some other person to commit an unlawful killing of another person, Appellant was not present when the killing occurred, and the killing was actually committed.

Significantly, the evidence and testimony presented during Appellant's trial established each and every element of the offense of accessory before the fact to murder, and sufficient

independent evidence was presented to corroborate Appellant's statements such that the evidence and testimony presented, when considered together with Appellant's statements, supported a reasonable belief the charged crime occurred. Turning to that evidence and testimony, direct evidence was presented establishing Settles unlawfully killed Jamil while attempting to kill Appellant's estranged husband at Appellant's behest after travelling to the scene of the crime in Appellant's car. Thus, the evidence and testimony unquestionably supported a conclusion Jamil died, Jamil's death was the result of a criminal act, and the killing was committed by someone other than Appellant with Appellant's aid and upon Appellant's urging.[8] Furthermore, Appellant's statements, when taken together with the other evidence and testimony establishing the elements of the accessory offense, supported a conclusion Appellant was **not** present at the scene of the crime and, instead, allowed Settles to borrow her car with one of his friends in order to commit the killing. Cf. State v. Gentry, 363 S.C. 93, 104, 610 S.E.2d 494, 500 (2005) (holding the trial judge properly declined a directed verdict in light of the conflicting evidence as to whether Gentry was present during an armed robbery or absent such that he could be convicted of accessory before the fact to armed robbery where the testimony of one of Gentry's confederates indicated he was present and actively participating in the armed robbery while Gentry's statements to law enforcement indicated he was not present at the time of the armed

[8] Importantly, the evidence establishing a death occurred and the death was the result of criminal agency was sufficient to satisfy the corpus delicti requirement in Appellant's case in light of the underlying purpose of that requirement. See People v. King, 271 Mich. App. 235, 241, 721 N.W.2d 271, 275 (Mich. Ct. App. 2006) ("[A] requirement that there be some evidence of assistance having been rendered in order to establish the *corpus delicti* of accessory after the fact is unduly restrictive in light of the purpose of the *corpus delicti* rule. The rule exists to prevent the use of a confession to convict someone of a crime that did not occur. Once it is established that a crime occurred, the defendant's statement may be introduced to establish the degree of guilt." (footnotes omitted)). In light of that fact, Appellant's confession – regardless of whether it was corroborated by independent evidence – could properly be used to determine whether she was culpable as an accessory to the crime. See id. at 241-242, 721 N.W.2d at 275 ("[T]he *corpus delicti* requirement for a charge of accessory after the fact is satisfied when the specific injury at the hands of a criminal agency, which is established by evidence independent of the confession, is that of the underlying crime committed by the principal. Once that has been established, as it was in the case at bar, the defendant's confession may then be introduced to establish that his or her degree of culpability is that of an accessory after the fact.").

robbery, did not take the stolen cocaine, and was waiting in a car outside the victim's residence). Moreover, Appellant's statements indicating she was not present at the time of the killing were corroborated directly by Polk's testimony indicating Settles had informed her he went to the scene of crime with a friend and circumstantially by the fact Settles killed the wrong person, which Appellant likely would have prevented had she been present at the scene since it would be logical and reasonable to infer she would have been able to recognize her estranged husband and distinguish him from another person.[9] See Osborne, 335 S.C. at 180, 516 S.E.2d at 205 ("Applying this rule to the facts at hand, we find the State provided sufficient independent evidence to support the trustworthiness of Respondent's statements to police. We further find this independent evidence, taken together with the statements, allowed a reasonable inference that the crime . . . was committed."); see also Dodd, 354 S.C. at 18, 579 S.E.2d at 334 ("Here, Dodd's confession to having a gun was corroborated by his threat to the clerk that he would kill her if she did not do as he told her. Although his threat, unaccompanied by any representation of a deadly weapon, would not *independently* be sufficient to establish the element of a deadly weapon, the threat *is* sufficient to corroborate Dodd's confession to being armed.").

In light of the fact the testimony and evidence presented during trial established each and every element of the charged crime, sufficient evidence existed from which the jury could rationally and logically conclude Appellant was an accessory before the fact to Jamil's murder. See Williams, 321 S.C. at 385, 468 S.E.2d at 658 ("[I]f there is any evidence tending to establish the corpus delicti, then it is the duty of the trial court to pass that question on to the jury."); cf. Brown, 307 S.C. at 468, 415 S.E.2d at 812 (holding a case was properly submitted to the jury where the evidence consisted of an inculpatory statement by Brown, evidence indicating the

[9] Notably, testimony was presented during trial establishing Jamil was at least somewhat taller and larger than Dale, Jr. (R. p. 58; p. 68).

victim's body was decapitated, and testimony indicating strangulation could not be ruled out as a possible cause of death). Therefore, although Settles's testimony – if it had been accepted as true in its entirety – could have supported a conclusion Appellant was present at the scene and actually guilty of the murder as a principal instead of merely being an accessory to the crime, the trial judge properly denied Appellant's directed verdict motion and submitted the case to the jurors to allow them to resolve the factual disputes raised by the evidence, including those involving the credibility and believability of the testimony and evidence. See State v. Larmand, 415 S.C. 23, 32, 780 S.E.2d 892, 896 (2016) ("Although [Larmand] presented plausible explanations for each of these facts, our duty is not to weigh the plausibility of the parties' competing explanations. Rather, we must assess whether, in the light most favorable to the State, there was substantial circumstantial evidence from which the jury could infer [Larmand's] guilt."); see also State v. Pitts, 296 S.C. 420, 427, 182 S.E.2d 738, 742 (1971) ("A motion for a directed verdict of acquittal is properly refused where the determination of guilt is dependent upon the credibility of a witness, as this is a question that goes to the weight of evidence and is clearly for determination by a jury."); State v. Strickland, 389 S.C. 210, 215, 697 S.E.2d 681, 684 (Ct. App. 2010) ("While we acknowledge that Wife testified Appellant came in and politely asked for the key to their trailer and did not address Victim, Father's contrary testimony created an issue of credibility and, at least, created a situation where the State produced enough evidence to survive a directed verdict motion."); cf. Gentry, 363 S.C. at 104, 610 S.E.2d at 501 ("Given the conflicting evidence on both charges, the trial judge appropriately submitted the charges to the jury and properly denied the directed verdict motion."). Appellant's convictions should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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December 2, 2016

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Abbeville County
Honorable Frank R. Addy, Jr., Circuit Court Judge
Appellate Case No. 2015-002334

THE STATE,

Respondent,

vs.

KARLITA DESEAN PHILLIPS,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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