

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**ORIGINAL**

Appeal from Horry County

Honorable Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TERRELL FREEMAN,

APPELLANT

APPELLATE CASE NO 2018-000851

INITIAL BRIEF OF APPELLANT

**RECEIVED**  
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SC Court of Appeals

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**STATEMENT OF ISSUE ON APPEAL**

Whether the trial court erred in refusing to instruct the jury that flight alone cannot be substantial circumstantial evidence and therefore would constitute insufficient circumstantial evidence to convict Appellant?

## STATEMENT OF THE CASE

Appellant was indicted for murder, possession of a weapon during the commission of a violent crime, kidnapping, and grand larceny valued at between \$2,000 and \$10,000 by an Horry County grand jury in May 2017. Tr. 14, ll. 3 – 10; R. \_\_ (Indictment). He proceeded to trial on April 23, 2018 before the Honorable Steven H. John and a jury. Tr. 1. George DeBusk, Jr. and Seth Oskin appeared on behalf of the State, and Martin Spratlin represented Appellant. G. Scott Bellamy represented co-defendant Nicholas McIver. The trial court granted Appellant's motion for a directed verdict as to the kidnapping charge. Tr. 542, ll. 16 – 20. The jury found Appellant not guilty on the murder and possession of a weapon charges. Tr. 650, l. 23 – Tr. 651, l. 8. However, he was found guilty on the grand larceny charge. Tr. 651, ll. 9 – 14. Judge John sentenced Appellant to five years' incarceration on this charge. Tr. 663, l. 21 – Tr. 664, l. 4.

This brief follows.

### STANDARD OF REVIEW

“The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand is an error of law.” State v. Pittman, 373 S.C. 527, 570, 647 S.E.2d 144, 167 (2007).

“In criminal cases an appellate court sits to review errors of law only.” State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). “An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion.” Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000). “An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” Id.

## ARGUMENT

**The trial court erred in refusing to instruct the jury that flight alone cannot be substantial circumstantial evidence and therefore would constitute insufficient circumstantial evidence to convict Appellant.**

### *Relevant facts*

On July 9, 2016, Kenneth Thompson arrived at the K&W Cafeteria in North Myrtle Beach to eat lunch. Tr. 86, l. 8 – Tr. 87, l. 9. Around 11:00 in the morning, the time when K&W opened, he parked under a tree to provide shade for his car. Id. As he got out of his car, he heard “a popping sound.” Tr. 89, l. 1 – Tr. 91, l. 10. He “saw a man pulling a lady out of the car by her arms” and one man pushing her out of the car in the K&W Cafeteria parking lot. Id. Thompson ran behind the K&W Cafeteria and noticed the white car was gone when he turned back. Id. He could not identify either individual involved. Tr. 92, ll. 1 – 12.

Thompson testified at trial that he never heard any sort of argument or fight; nobody was in distress prior to hearing the popping sound. Tr. 101, ll. 2 – 8. Reggie Benton, the general manager of K&W Cafeteria, saw the decedent in the parking lot. Tr. 107, ll. 19 – 21.

Aaron Jones, an officer with the City of Myrtle Beach, responded to the restaurant. Tr. 115, l. 4 – Tr. 116, l. 7. Another officer, Caroline Rose, was able to identify the decedent as Amanda Fisher after locating her cell phone. Tr. 127, l. 6 – Tr. 128, l. 8.

The decedent’s credit card was later used by Appellant’s co-defendant, Nicholas McIver, at two convenience stores, one in Marshville, North Carolina and one in Bennettsville, South Carolina. Tr. 210, l. 21. – Tr. 221, l. 8; Tr. 223, l. 1 – Tr. 232, l. 2; Tr. 468, ll. 11 – 22. Appellant was never seen in the store or using the decedent’s credit card. Id. Owen Lynam, a

detective with the City of North Myrtle Beach Department of Public Safety, testified that there was “no evidence that [Appellant] used or took anything of [the decedent’s].” Tr. 468, ll. 18 – 22. He agreed that there was no evidence that Appellant gained anything from the unfortunate death of the decedent. Tr. 469, ll. 1 – 3.

The white car observed by Thompson was later located in Charlotte, North Carolina. Tr. 290, l. 5 – Tr. 305, l. 298, l. 5. The car had been burned at a residential location not far from McIver’s girlfriend’s house. Id. Appellant was never developed as a suspect for the burning of the car. Tr. 304, l. 22 – Tr. 305, l. 12; Tr. 314, l. 21 – Tr. 315, l. 8; Tr. 334, ll. 5 – 8. No witnesses placed Appellant at the site where the car had burned. Id.

Dr. Edward Proctor, Jr. was qualified as an expert in the field of forensic pathology at trial and opined as to the cause of death. Tr. 237, l. 11 – Tr. 245, l. 25. He indicated that she “suffered a gunshot wound to the head with an entrance in the right head above the ear.” Id. Dr. Proctor indicated this was a fatal wound. Tr. 241, ll. 8 – 10. He testified that the cause of death was “traumatic injury from the gunshot wound to the head.” Id.

Counsel for Appellant requested a jury charge that “flight alone is not substantial circumstantial evidence,” relying on State v. Lewis, 403 S.C. 345, 743 S.E.2d 124 (2013). Tr. 565, ll. 21 – 25. The trial court declined to give the charge, and the State remarked on this matter in its closing. Tr. 566, ll. 1 – 10; Tr. 584 ll. 8 – 13. Following closing arguments, Appellant renewed his objection as to the failure of the trial court to charge that flight is not substantial circumstantial evidence. Tr. 643, l. 19 – Tr. 644, l. 3.

## *Discussion*

Generally, the trial judge is required to charge only the current and correct law of South Carolina. State v. Burkhart, 350 S.C. 252, 565 S.E.2d 298 (2002); State v. Shuler, 344 S.C. 604, 545 S.E.2d 805 (2001); Clark v. Cantrell, 339 S.C. 369, 529 S.E.2d 528 (2000); Cohens v. Atkins, 333 S.C. 345, 509 S.E.2d 286 (Ct.App.1998); see also State v. Buckner, 341 S.C. 241, 534 S.E.2d 15 (Ct.App.2000) (holding jury charge is proper if, as a whole, it is free from error and reflects current and correct law of South Carolina).

In reviewing jury charges for error, consideration should be given to the court's jury charge as a whole in light of the evidence and issues presented at trial. Burroughs & Chapin Co. v. South Carolina Dep't of Transp., 352 S.C. 535, 574 S.E.2d 751 (Ct.App.2002); see also State v. Todd, 290 S.C. 212, 349 S.E.2d 339 (1986) (when reviewing jury charge for error, Court must consider charge as a whole); see also Welch v. Epstein, 342 S.C. 279, 536 S.E.2d 408 (Ct.App.2000) (when reviewing jury charge for alleged error, appellate court must consider charge as a whole in light of evidence and issues presented at trial).

A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law. In re McCracken, 346 S.C. 87, 551 S.E.2d 235 (2001); State v. Johnson, 315 S.C. 485, 445 S.E.2d 637 (1994); State v. Burton, 302 S.C. 494, 397 S.E.2d 90 (1990) (charge is sufficient if, when considered as a whole, it covers law applicable to case). The substance of the law is what must be charged to the jury, not any particular verbiage. Burkhart, 350 S.C. at 261, 565 S.E.2d at 303; State v. Smith, 315 S.C. 547, 446 S.E.2d 411 (1994).

To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant. State v. Harrison, 343 S.C. 165, 539 S.E.2d 71

(Ct.App.2000); see also Priest v. Scott, 266 S.C. 321, 223 S.E.2d 36 (1976) (in general, an alleged error in a portion of a charge must be considered in light of the whole charge, and must be prejudicial to the appellant to warrant a new trial).

In Lewis, the defendant was convicted of aiding and abetting homicide by child abuse. 403 S.C. 345, 348, 743 S.E.2d 124, 125. When an officer visited Lewis at his grandmother's home a couple of days after the incident, Lewis ran out the back door but then returned and explained that he thought he was going to be arrested. Id. at 351, 743 S.E.2d at 127. Lewis later attempted suicide and was admitted to the Laurens County Hospital. Id. The State asserted that Lewis's flight and suicide attempt were sufficient evidence to withstand a directed verdict, and this Court disagreed. Id. at 357, 743 S.E.2d at 130.

The State's case against Appellant was largely circumstantial. Law enforcement did not "find any evidence that actually showed what occurred during this incident." Tr. 123, ll. 7 – 10. Recognizing that a charge regarding flight has been disfavored since State v. Grant, 275 S.C. 404, 272 S.E.2d 169 (1980), the requested charge in this case served only to ensure that the State met its burden in offering substantial circumstantial evidence. The State failed to prove that Appellant either committed the charge of grand larceny or was guilty under an accomplice liability theory. McIver disposed of the car by burning it; no testimony linked Appellant to that undertaking. There was no testimony regarding a plan or scheme between Appellant and McIver to take the car, and, as noted by counsel for Appellant, "[there was] no evidence in the record about where he was, what he did, once that car left K&W." Tr. 530, ll. 5 – 9. As such, the evidence supported the requested instruction.

The jury charge proposed by Appellant would have ensured that a jury rendered a verdict based on the law as established in Lewis, supra. Failure to give the charge constitutes reversible error.

**CONCLUSION**

Based on the foregoing, Appellant respectfully requests that this Court reverse his conviction and remand for a new trial on the grand larceny charge based upon the trial court's error in failing to charge the jury as requested.

A handwritten signature in black ink, appearing to read "Taylor B. Gilliam", written over a horizontal line.

Taylor B Gilliam  
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of February, 2019.

STATE OF SOUTH CAROLINA  
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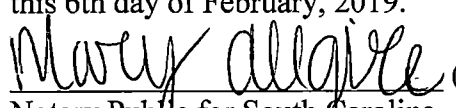
APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Initial Brief of Appellant and Designation of Matter have been served on Terrell Freeman, #376156, at Allendale Correctional Institution, PO Box 1151, Hwy. 47, Fairfax, SC 29827, this 6th day of February, 2019.

  
Taylor D Gilliam  
Appellate Defender  
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 6th day of February, 2019.

 (L.S)  
Notary Public for South Carolina  
My Commission Expires: May 12, 2027