STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
The Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2017-002447

THE STATE,

Respondent,

vs.

MITCHELL MONROE WEATHERALL,

Appellant.

INITIAL BRIEF OF RESPONDENT AND DESIGNATION OF MATTER

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STATEMENT OF THE CASE

On or about November 3rd or 4th, 2013, Appellant, Mitchell M. Weatherall, murdered Helbert Woodbury in Horry County. Weatherwall was arrested several days later after a police investigation and charged with Woodbury's murder. The Horry County grand jury subsequently indicted Weatherall for Woodbury's murder. (Indictment # 2014-GS-26-1415). Weatherall was represented on the charge by Jonny Gardner and Thomas Jarrett Bouchette, Esquires. The State was represented by Assistant Solicitor Nancy R. Livesay. On March 20-23, 2017, Weatherall proceeded to a jury trial before the Honorable Benjamin H. Culbertson, Circuit Court Judge. At the conclusion of the trial, the jury found Weatherall guilty of Woodbury's murder. Judge Culbertson sentenced Weatherall to life in prison for the murder. Weatherall appeals his conviction and sentence to this Court raising two (2) actual issues. (Tr. pp 1-412; Indictment; Sentencing Sheet; Brief of Appellant). This is the Initial Brief of Respondent.

RESPONDENT'S STATEMENT OF FACTS

Helbert Woodbury ("the victim"), a fifty-seven (57) year old African-American man, was murdered in a motel room in Myrtle Beach, S.C. Appellant, Mitchell Weatherall ("Weatherall") is the person who murdered the victim. (Tr. pp. 1-412).

Weatherall murdered the victim by beating him to death. The victim died from blunt force trauma to the head which caused an "egg shell" skull fracture to the back of the victim's head killing him. The victim also had defensive wounds on his arms. The victim's blood [DNA] was found all over the motel room where he was killed. There was soaking blood on the carpet between the motel room's two (2) single beds and blood spatter on the walls, furniture, and ceiling of the motel room indicating a violent assault took place within the motel room. (Tr. pp. 77-84; 85-94; 95-113; 115-21; 181-89; 190-93; 244-52; 268-89; 213-43; 294-309).[1]

The victim, who was from Hemmingway, S.C., was lured to Myrtle Beach by Weatherall over Craig's List with the promise of sexual favors. The victim arrived in Myrtle Beach on Friday, November 1, 2013, and according to a motel clerk he and Weatherall checked into Room 135 of the Atlantic View Motel together. Weatherall was listed as a co-occupant of the motel room on motel registration records. Weatherall also signed a form stating he was a co-occupant and the motel clerk made and retained a copy of the victim's and Weatherall's driver's license. (Tr. pp. 85-94; 194-213; State's Ex. 65).

The victim and Weatherall registered for one (1) week. They were to check out on Friday, November 8, 2013. The victim paid for the room. Over the first several days, among

[1] Police were not able to search the motel room until November 12, 2013 after Weatherall and some of his associates had attempted to clean up the room and after motel cleaning personnel had cleaned the room. However, even after these cleanings, the victim's blood was still found all over the motel room by crime scene investigators.

other things, the victim and Weatherall drank alcohol and used illegal drugs in the motel room. At some point, on or about November 3rd or 4th, 2013 [either Sunday or Monday], the two (2) men ran out of money, an argument ensued, and Weatherall beat the victim to death. (Tr. pp. 85-94; 194-213; 268-89; State's Ex. 65; State's Ex. 77).

After murdering the victim, on Tuesday, November 5, 2013, Weatherall, with the assistance of a male friend [Weatherall's boyfriend Joey Garsow], carried the victim's dead body out of the motel room in a blanket to a nearby car and placed the body in the back seat. Weatherall had to get rid of the victim's body because the motel room where the victim was murdered, Room 125 of the Atlantic View Motel, was the same one rented by the victim and Weatherall. Weatherall's carrying the victim's body to a nearby car, with the assistance of his friend, was captured on hotel surveillance video and played for the jury. (Tr. pp. 85-94; 194-213; State's Ex. 65 [registration] State's Ex. 77 [surveillance video]; Tr. pp. 213- 43).

A female friend of Weatherall, Tonya Wedlock, testified to driving to the Atlantic View Motel with Weatherall and Garsow on Tuesday, November 5, 2013, and allowing Weatherall to borrow her car at the time. Weatherall specifically told Tonya at the time that he needed to take the victim [who Tonya thought was alive] back to the Greyhound Bus Station so the victim could go home. Once she, Weatherall, and Garsow arrived at the Atlantic View Motel in Tonya's car, Weatherall asked Tonya to step around the corner of the motel out of sight. She did so and sat on a bench until Garsow joined her on the bench. As a result, Tonya did not actually see Weatherall and Garsow remove the victim's body from the motel room and place it in her car. At trial, Tonya was shown the surveillance video and Tonya identified Weatherall and Garsow in the surveillance video carrying the victim's body from the motel room and placing the victim's body in her car. She also testified consistent with the surveillance video, that Weatherall then

drove her car out of the motel parking lot. At the time of the incident, she of course had not seen the surveillance video and thought Weatherall was taking the victim to the bus station. (Tr. pp. 85-94; 194-213; State's Ex. 65 [registration] State's Ex. 77 [surveillance video]; Tr. pp. 213- 43).

Weatherall then drove the victim's body to a secluded location, and dumped the body, but not until first stripping the body of all belongings and clothing. Weatherall dumped the body in the Carolina Forest area of Horry County. Weatherall drove off of the last paved road, Postal Way, onto a gravel road, and then onto a dirt path and dumped the body in the thick undergrowth off the dirt path in a wood-line near a clear cut for a high voltage power line. The victim's body could not be seen unless the undergrowth was pulled back near the body. When the victim's nude, decomposing body was discovered several days later by police on November 12, 2013, there was no clothing, wallet, jewelry or identification around the body. Next to the body was a blanket or comforter. The body was so decomposed it could only be identified by fingerprint and DNA comparison. (State's Ex. 77 [surveillance video]; Tr. pp. 213-43; 151-71).

Still on Tuesday, November 5, 2013, after dumping the victim's body and returning to the motel in Tonya's car, Weatherall proceeded to use the victim's debit card to buy alcohol, food, and drugs. However, Weatherall did not buy alcohol, food, and drugs with the victim's debit card himself, but used two (2) other individuals to do that for him. According to Weatherall's friend Tonya Wedlock, after Weatherall returned to the motel with her car [after dumping the victim's body], Weatherall came back to Room 125 of Atlantic View Motel and picked up a book bag out of which Weatherall retrieved a credit or ATM type card. Weatherall gave the card to his boyfriend Joey Garsow and instructed Tonya and Garsow to use the card. Over the next several days Wedlock and Garsow used the card to purchase items which were

traded for drugs which the group, including Weatherall, used in the room where the victim had been murdered. The victim's ATM card records corroborated these facts. (Tr. pp. 213-43).

I. Judge Culbertson did not err in denying Weatherall's Batson motions?[2]

What Occurred Below

After selection of the jury, Weatherall made two (2) separate Batson[3] motions outside the presence of the jury. (Tr. pp. 8-37). First, Weatherall objected to the State exercising one (1) of its peremptory challenges against a female African-American juror. Second, Weatherall objected to the State striking a male juror that Weatherall claimed was gay. Weatherall claimed the State excused this juror because he was gay. As to this 2nd Batson motion, Weatherall conceded to Judge Culbertson in making the motion that sexual orientation had not been recognized by the United States Supreme Court as a protected class. (Tr. pp. 33-37).

The Solicitor then informed the Court of her reason for striking each individual juror. The Solicitor informed the Court that the African-American female juror was struck because the NCIC rap sheet the Solicitor's Office ran on the juror showed she had a prior conviction for a criminal offense. The Solicitor informed the Court the male juror was struck because he seemed disinterested in the case based on the Solicitor's observations of the juror during voir dire. The Solicitor also informed the Court that she did not know the male juror was gay and there was nothing in her notes from general qualification that the juror was even asked or disclosed his sexual orientation or that the juror's sexual orientation was noted by her anywhere. The Solicitor

[2] Respondent has combined Appellant's issues 1 and 2 as they both raise Batson challenges. Appellant also treats issues 1 and 2 together in his brief. (See IBOA & Table of Contents, p. i.).
[3] Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712 (1986).

also questioned where the defense' information came from that this particular juror was even gay. (Tr. pp. 33-37).

When given the opportunity to respond to the State's stated neutral reasons for these two (2) peremptory challenges, appellant Weatherall gave no response. (Tr. 33-37). As a result, Weatherall did not meet his burden to show the stated reasons were mere pre-textual, in fact, he did not even attempt to do so. (Tr. pp. 33-37).

And, contrary to Weatherall's claim in his brief, the African-American female juror, Juror #191 Shirley Wright, was not the only African-American juror presented for jury selection. Juror # 244 Alexander McCoy was African-American and he was presented by the State and seated on the jury. (Tr. p. 29, Horry County Courthouse Random Strike Sheet).

Further, the Solicitor exercised only three (3) of her five (5) peremptory challenges during jury selection. She excused as stated Juror #191 Shirley Wright, an African-American female, Juror #307 Kathleen Russell, a white female, and Juror # 397 David Winecoff, a white male.[4] (Tr. pp. 27, 31; Random Strike Sheet) The Solicitor did not exercise any peremptory challenge during alternate juror selection. (Tr. pp. 32-33; Random Strike Sheet). As a result, there was no pattern of racial discrimination in the Solicitor's peremptory challenges. (Tr. pp. 25-33; Random Strike Sheet). Further, during jury selection the Solicitor presented seven (7) female jurors who were either struck by Weatherall or seated on the jury. And, during alternate jury selection, the Solicitor presented the only female juror called for alternate jury selection. As

[4] Another African-American female juror was drawn for service in this case, but she had been mistakenly placed in the pool of potential jurors, as she had been removed from the case by the Court during voir dire of the jury about this particular case, i.e. she was not impartial to this particular case. (See Tr. p. 9; Random Strike Sheet).

a result, there was no pattern of discrimination based on sex. (Tr. pp. 25-33; Random Strike Sheet).

As a result, Judge Culbertson found the State had not violated Batson v. Kentucky and did not order re-striking of the jury. The Court found the stated reason for striking the female African-American juror was race neutral. The Court also found credible the Solicitor's stated reason for striking the male juror. And, as to the male juror, the Court also found that he was not a member of a protected class as recognized by the United States or South Carolina Supreme Court in Batson and its progeny. (Tr. pp. 33-37).

Standard of Review

(General Appellate Standard)

In criminal cases, this Court will review errors of law only. State v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (2006). This Court is bound by the trial court's factual findings unless clearly erroneous. State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105 (2000). This Court is limited to determining whether the trial court abused its discretion. State v. Rochester, 301 S.C. 196, 391 S.E.2d 244 (1990). This Court does not re-evaluate the facts based on its own view of the preponderance of the evidence but determines whether the trial court's ruling is supported by any evidence. State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001).

(Batson v. Kentucky Motions)

Because a trial court's findings regarding purposeful discrimination rest largely upon its evaluation of credibility, those findings will be given great deference by this Court. State v. Tucker, 334 S.C.1, 512 S.E.2d 99 (1998); Sumpter v. State, 312 S.C. 221, 439 S.E.2d 842 (1994). An evaluation of an attorney's state of mind based on demeanor and credibility lies "peculiarly within a trial judge's province." Hernandez v. New York, 500 U.S. 352 (1991); State

v. Evins, 373 S.C. 404, 645 S.E.2d 904 (2007). "The trial court's findings regarding purposeful discrimination are given great deference and will not be set aside by this court unless clearly erroneous." State v. Garris, 394 S.C. 336, 714 S.E.2d 888 (Ct. App. 2011), *citing* Evins, 373 S.C. at 416, 645 S.E.2d at 909-10. It is within the discretion of a trial court to determine purposeful discrimination based on the totality of relevant facts, including the credibility of the attorney. Id., *citing* State v. Wilder, 306 S.C. 535, 413 S.E.2d 323 (1991). "Therefore, those findings are given great deference and will not be set aside unless clearly erroneous." Evins, *supra.*

Law/Analysis

A party may not engage in racial discrimination in exercising peremptory strikes. Georgia v. McCollum, 505 U.S. 42, 59 (1992). A party may not engage in striking a juror on the basis of gender. J.E.B. v. Alabama ex rel. T.B., 511 U.S. 127 (1994). "The Equal Protection Clause of the Fourteenth Amendment prohibits the striking of a venire person on the basis of race or gender." Robinson v. Bon Secours St. Francis Health System Inc., 382 S.C. 224, 675 S.E.2d 744 (2009); State v. Shuler, 344 S.C. 604, 615, 545 S.E.2d 805, 810 (2001). The Constitution forbids striking even a single prospective juror for a discriminatory purpose. Snyder v. Louisiana, 552 U.S. 472, (2008); United States v. Lane, 866 F.2d 103, 105 (4th Cir. 1989).

Step One

After jury selection, Weatherall made a Batson/J.E.B. motion. (Tr. pp. 8-37). Judge Culbertson appropriately conducted a Batson hearing based on the exercise of the State's strikes and Weatherall's motion. (Tr. pp. 8-37). State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996);

State v. Chapman, 317 S.C. 302, 454 S.E.2d 317 (1995).[5] *See* State v. Haigler, 334 S.C. 623, 629-30, 515 S.E.2d 88, 90-91 (1999)(When 1 party strikes a member of a cognizable racial group or gender, the court must hold a Batson hearing if the opposing party requests one); Arthur v. Sexton Dental Clinic, 368 S.C. 326, 628 S.E.2d 894 (Ct. App. 2006); State v. Flynn, 368 S.C. 83, 627 S.E.2d 763 (Ct. App. 2006)(once a party requests a hearing the burden shifts to the proponent of the strike who must present a neutral reason or explanation), *citing* Adams.

Step Two

Upon a motion being made, the burden shifts to the adverse party to provide a race or gender neutral explanation for its strikes. Chapman. The "burden" of the strike's proponent at this step is very limited. The explanation need not rise to a challenge for cause. State v. Lewis, 293 S.C. 107, 359 S.E.2d 66 (1987); State v. Martinez, 294 S.C. 72, 362 S.E.2d 641 (1987). Unless *discriminatory intent is inherent in the explanation*, the reason advanced will be deemed neutral. Hernandez. The explanation need not be "persuasive, or even plausible," so long as it is facially neutral. Purkett v. Elem, 514 U.S. 765 (1995); Adams. Unless a discriminatory intent is inherent in the explanation, it will be deemed neutral and the court must proceed to Batson's 3rd step, where the burden shifts to the strike's opponent to establish it was discriminatory, or mere pretext. Cochran; State v. Smalls, 336 S.C. 301, 519 S.E.2d 793 (Ct. App. 1999). However, the proponent must present a reasonably specific and legitimate explanation for the strike at the 2nd step. State v. Giles, 407 S.C. 14, 754 S.E.2d 261 (2014), *modifying* Adams, *to the extent*

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[5]The objecting or moving party need not make out a *prima facie* showing of purposeful discrimination as formerly required; the *prima facie* showing is made when a member of a cognizable racial group or gender has been struck and the opposing party makes a motion for a Batson review. Adams, *supra*; Chapman, *supra*; State v. Casey, 325 S.C. 447, 481 S.E.2d 169 (Ct. App. 1997); State v. Easler, 322 S.C. 333, 471 S.E.2d 745 (Ct. App. 1996); *Compare former law* State v. Elmore, 286 S.C. 70, 332 S.E.2d 762 (1985); State v. Southerland, 316 S.C. 377, 447 S.E.2d 862 (1994).

necessary). General overall subjective dissatisfaction with a juror is not legally sufficient. Id.

The State's explanations

The Solicitor informed the Court of her reason for striking each challenged juror. The Solicitor informed the Court that the African-American female juror was struck because her NCIC rap sheet showed she had a prior conviction for a criminal offense. The Solicitor informed the Court the male juror was struck because he seemed disinterested in the case based on her observations of him during the entire voir dire. The Solicitor also informed the Court that she did not know the male juror was gay and there was nothing in her notes from general qualification that the juror was even asked or disclosed his sexual orientation or that the juror's sexual orientation was noted by her anywhere. The Solicitor also questioned where the information came from that Weatherall was relying upon to support that this particular juror was even gay. (Tr. pp. 33-37).

The Solicitor's stated reason for exercising each of these two (2) challenged peremptory strikes was race and gender neutral. (Tr. pp. 33-37). The female African-American juror had a criminal conviction appearing on the NCIC rap sheet run by the Solicitor's Office on her. Even though the trial court had found during general qualification of the entire panel that the criminal conviction was not related to this juror and she was not disqualified to serve based on this juror's assurance to the court it was not her, the Solicitor still believed the conviction was related to this juror. The Solicitor further explained to Judge Culbertson that the NCIC rap sheet indicated the juror had been convicted of a criminal offense, and the juror did not provide Judge Culbertson with a driver's license when she contested the conviction during general qualification, but with a State identification [i.d.] card, which indicated to the Solicitor that the juror was in fact the

person noted on the NCIC rap sheet.[6] Out of an abundance of caution, the Solicitor exercised a peremptory challenge as to this juror because the Solicitor did not want a juror on this jury with a criminal record and who was actually disqualified from service. This stated reason has nothing to do with and is in no way related to the gender **or** race of the Juror.[7]

As to the peremptory strike of the male juror, the Solicitor stated she was not aware this Juror was gay, and there was no information in the record that he was gay. This is supported by the record. (Tr. pp. 1-37). Further, her reason for striking this juror was that he seemed disinterested throughout the entire voir dire. This reason is race and gender neutral. It is also

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[6] Under South Carolina law, certain convictions, such as drug and driving convictions, result in the suspension of the offender's driver's license.

[7] Based on Respondent's post-trial investigation, there was a clerical error in running this Juror's NCIC rap sheet, and as a result, the rap sheet incorrectly reflected this juror had a prior criminal conviction, when the conviction actually belonged to a different individual. However, this does not change the legal analysis of the claim. The fact that it is later determined that the prosecutor relied on incorrect information in exercising a strike, does not change the fact the strike was exercised for race neutral reasons and did not violate Batson. Johnson v. State, 302 Ga 774, 781, 809 S.E.2d 769, 776 (2018)("It is troubling that the information on which the district attorney relied in making four of his ten peremptory strikes was later shown to be incorrect, but such later revealed inaccuracy does not establish that the prosecutor's reasons for the professed strikes were necessarily a pretext for invidious discrimination."); Coleman v. State, 301 Ga. 720, 725, 804 S.E.2d 24 (2017)("Batson is only about *racial discrimination* – it does not prevent the prosecution from relying on inaccurate (but race neutral) information in striking jurors."); Lee v. Commr. of Ala. Dept. of Corr., 726 F.3d. 1172, 1226 (11th Cir. 2013)("The conclusion that an honestly mistaken but race-neutral reason for striking a black venire member did not violate Batson was not unreasonable."); Lamon v. Boatwright, 467 F.3d 1097, 1101 (7th Cir. 2006)("Batson and its progeny direct trial judges to assess the *honesty*-not the accuracy of a proffered race-neutral explanation."); Finley v. State, 529 S.W.3d 198, 209 (Tex. Crim. App. 2017)("Based on this binding precedent, we conclude that merely identifying a factual mistake in the State's race-neutral explanation for its peremptory strike is not sufficient to meet the appellant's burden of proving purposeful discrimination")(*numerous citations omitted*); Harris v. State, S.W.2d 232, 235 (Tex App. 1999)(holding that appellant failed to meet Batson burden, even though prosecutor "may have been mistaken about the ... basis for his challenge," because the challenge was race neutral and there was "no indicia that the challenge was racially motivated."); Lee v. State, 898 So.2d 790, 815-16 (Ala. Crim. App. 2001)("A prosecutor may strike from mistake, so long as the assumptions involved are based on an honest belief and are racially neutral.") *quoting* Reese v. City of Dothan, 642 So.2d 511 (Ala. Crim. App. 1993); McElemore v. State, 798 So.2d 693, 698 (Ala. Crim. App. 2000).

sexual orientation neutral, if such a class is ever recognized by the United States Supreme Court.

Step Three

If a gender or race neutral explanation is given for exercising the peremptory challenge, the moving party must show the explanation given is merely pretextual, i.e., there has been purposeful discrimination. Hernandez. The opponent carries the ultimate burden of showing purposeful discrimination and must demonstrate the pretextual nature of the stated reason. Purkett; Adams; Cochran. In this case, Weatherall completely failed to show the explanation given for the strikes was merely pretextual. **(Tr. pp. 33-37).** Cochran; Smalls.[8] The methods of attacking a strike are (1) to establish the alleged reason or criteria for the use of any strike was not consistently applied to every juror; and (2) the explanation is so implausible or fantastic it lacks any credibility. Evins; Adams; *See* Haigler, 334 S.C. at 629, 515 S.E.2d at 91 (Pretext generally will be established by showing similarly situated members of another race were seated on the jury).[9] Weatherall did neither of the two (2) described above. **(Tr. pp. 33-37).** Under some circumstances, the neutral explanation given by the proponent may be so fundamentally implausible the trial court may determine, at the 3rd step, the explanation was mere pretext even without a showing of disparate treatment. Williams, n. 2.[10] Judge Culbertson did not make any such finding but found the Solicitor's stated reasons for exercising these two (2) peremptory

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[8]Weatherall argues Judge Culbertson erred because of the language he used before requiring the State to respond to Weatherall's motion; however, Respondent submits it is clear from the entire record, Judge Culbertson was simply reciting the law as far as how the 3 step Batson process works (Tr. pp. 33-37), not making specific findings at that time. This is clear by Judge Culbertson's eventual decision at the end of the hearing where he found the State had not violated Batson. (See Tr. pp. 33-37).

[9]

[10] Although a party does not have a duty to state whether the same standards are applied to jurors that are seated, as are to jurors that are excused, a party must be prepared to show the reason or criteria for the use of any strike was consistently applied to every juror, and not merely pretextual. Sumpter; State v. Johnson, 302 S.C. 243, 395 S.E.2d 167 (1990).

challenges were race and gender neutral and credible. **(Tr. pp. 33-37).**

Whether a party has engaged in any purposeful discrimination will largely depend on the trial court's evaluation of the credibility of the party's explanation. In the typical strike inquiry, the decisive question will be whether counsel's neutral explanation for a strike should be accepted by the court as being non-discriminatory. There will seldom be much evidence bearing on the issue, and the best evidence will often be the demeanor of the attorney who used the strike. Shuler. The evaluation of an attorney's state of mind based on demeanor and credibility lies "peculiarly within a trial judge's province." Hernandez; Evins; Shuler. Because the court's findings regarding purposeful discrimination rest largely upon its evaluation of credibility, those findings will be given great deference on appeal. Tucker; State v. Casey, 325 S.C. 447, 481 S.E.2d 169 (Ct. App. 1997). It is within a trial court's discretion to determine purposeful discrimination based on the totality of relevant facts, including the credibility of the party making the strike. Garris; Wilder. The failure of a party to consistently apply a proffered neutral reason for striking jurors, infers an invidious discriminatory purpose. Oglesby. Whether or not jurors are struck for reasons similar to those who are seated is left to the determination of the trial court. State v. McCray, 332 S.C. 536, 506 S.E.2d 301 (1998).[11]

At the 3rd step, Weatherall offered no evidence that the State treated other jurors disparately than the two (2) jurors who were peremptory challenged. Weatherall did not point to any white or male juror who had an NCIC rap sheet conviction but was allowed by the State to

[11] In Oglesby, it was held to be error for a party to strike 3 black female jurors because they were patients of a doctor who was a witness, when a white female juror was seated who also was a patient of the doctor. Similarly, in State v. Grate, 310 S.C. 240, 423 S.E.2d 119 (1992), a new trial was granted where a party struck 2 black male jurors because of their ages (22 and 28), but seated a 21 year old white juror. *See* Miller-El v. Dretke, 545 U.S. 231 (2005)(if proffered reason for striking black panelists applies just as well to an otherwise-similar non-black panelist who is permitted to serve, such evidence tends to prove purposeful discrimination which is to be considered at 3rd step); Snyder (party did not strike similarly situated jurors for same reason).

be seated on the jury. **(Tr. 33-37).** Weatherall did not point to any juror who had been disinterested during voir dire but was allowed by the State to be seated on the jury. **(Tr. 33-37).** In fact, Weatherall made no argument at all in response to the State's stated neutral reasons for exercising these two (2) peremptory challenges. **(Tr. 33-37).** And, Weatherall presented absolutely no evidence that the male juror in question was in fact gay or where he, Weatherall, got the information that the male juror was gay. **(Tr. 33-37).**

As a result, Judge Culbertson did not err in finding the Solicitor was credible and in denying Weatherall's two (2) Batson motions. Therefore, this appellate issue has no merit and Weatherall's conviction and sentence must be affirmed.

ARGUMENT II.

Judge Culbertson did not err in declining to charge S.C. Code Ann. § 17-25-65 to the jury

What Occurred Below

At the conclusion of the testimony during the jury charge conference, Weatherall requested that Judge Culbertson instruct the jury on S.C. Code Ann. § 17-25-65. (Tr. pp. 351-59). S.C. Code Ann. § 17-25-65 is the statute that allows the prosecutor in his or her discretion to move for reconsideration of an inmate's sentence based on cooperation with the State subsequent to the inmate's conviction and sentence. Id.

Weatherall's justification for this requested instruction on the law in this case was that it [the statute] showed potential bias of witness Marcus Bell, who testified during the trial. Bell testified that Weatherall admitted to him, while the two (2) men were cellmates in J. Reuben Long Detention Center, that he [Weatherall] killed the victim by hitting him over the head with a

bottle.[12] At the time of his testimony, Bell was serving a sentence of thirteen (13) years for trafficking in heroin.

However, Bell was never asked by Weatherall on cross-examination if he had been told about S.C. Code Ann. § 17-25-65. Bell was never shown the statute on cross-examination and asked about it. And, Bell was not prevented by the State or the Court from asking Weatherall about § 17-25-65. In fact, Weatherhall never asked Bell if he expected the prosecutor to move for reconsideration of his sentence in the future. (Tr. pp. 268-89).

Bell testified on direct examination no one had promised him anything in exchange for his testimony. Bell testified that when he initially wrote a letter to the Solicitor's Office detailing his knowledge of the case, he did want assistance with his sentence. However, Bell testified since then his motivation had changed to simply wanting to do the right thing, since a family member of his could have been murdered and he would want a person with knowledge to tell what they knew. Bell testified it was his understanding at the time of his testimony that nothing could be done for him as far as his sentence. (Tr. pp. 268-89).

At the charge conference, the Solicitor objected to the requested instruction on 17-25-65 because it had nothing to do with whether Weatherall was guilty or innocent of the crime of murder and would be confusing to the jury and it was a matter for cross-examination. The Solicitor noted Weatherall could have pursued an inquiry with the witness whether he was hoping for or anticipating a motion for reduction of his sentence on cross-examination, but

[12] A motel cleaning lady testified that when cleaning Room 125 after the end of the rental period for Weatherall and the victim, part of a broken wine or beer bottle was found in the room. The broken bottle was thrown away because the cleaning lady was unaware a murder had been committed in the room between November 1st and November 8, 2013.

Weatherall did not do so. To charge the statute now would therefore confuse the jury. (Tr. pp. 351-59).

Judge Culbertson declined to instruct the jury on § 17-25-65. (Tr. pp. 351-59). Weatherall now alleges Judge Culbertson erred in declining to instruct the jury on 17-25-65 and he was prejudiced by this error. Weatherall is wrong on both counts.

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).

(Of the Trial Judge)

The conduct of a criminal trial is left largely to the discretion of the trial judge, and this Court will not interfere unless the rights of the appellant were prejudiced. State v. Bridges, 278 S.C. 447, 298 S.E.2d 212 (1982). Therefore, this Court reviews errors of law only and is bound by the trial court's factual determinations unless they are clearly erroneous. State v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (2006). A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied. State v. Rye, 375 S.C. 119, 651 S.E.2d 321 (2007). If the instructions given to the jury afford the proper test

for determining the issues, the failure to give one side's requested instructions is not prejudicial. State v. Hughey, 339 S. C. 439, 529 S.E.2d 721 (2000).

Jury Charges

"The law to be charged must be determined from the evidence presented at trial." State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 512 (2000); State v. Goodson, 312 S.C. 278, 440 S.E.2d 370 91994); State v. Lee, 298 S.C. 362, 380 S.E.2d 834 (1989). "An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010). "To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." Mattison, 388 S.C. at 479, 697 S.E.2d at 583; State v. Gaines, 380 S.C. 23, 31, 667 S.E.2d 728, 732 (2008); State v. Huckabee, 388 S.C. 232, 694 S.E.2d 781 (Ct. App. 2010), *cert. denied. See* Smith v. Winningham, 252 S.C. 464, 166 S.E.2d 825 (1969).

If there is any evidence to warrant a jury instruction, a trial court must, upon request, give the instruction. State v. Smith, 391 S.C. 408, 706 S.E.2d 12 (2011). The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand constitutes an error of law. State v. Bryant, 391 S.C. 225, 705 S.E.2d 465 (Ct. App. 2011). A trial court commits error when it fails to give a requested charge on an issue raised by the evidence presented. Lee, 298 S.C. 362, 380 S.E.2d 834. The court has a duty to charge the jury as to the law applicable to the facts brought out in the testimony. State v. West, 138 S.C. 421, 136 S.E. 736 (1927). A trial judge is bound to lay before the jury the principles of law as are applicable to the case as made by the evidence. State v. Blackstone, 157 S.C. 278, 154 S.E. 161 (1930); State v. Faulkner, 151 S.C. 38, 149 S.E. 108 (1929); State v. Dodson, 16 S.C. 453

(1881). The purpose of jury instructions are to enlighten the jury and to aid them in arriving at a correct verdict. State v. Hewitt, 205 S.C. 207, 31 S.E.2d 257, 259 (1944).

When reviewing a jury charge for alleged error, the charge must be considered as a whole in light of the evidence and issues presented at trial. State v. Huckabee, 388 S.C. 232, 694 S.E.2d 781 (Ct. App. 2010); Daves v. Cleary, 355 S.C. 216, 224, 584 S.E.2d 423, 427 (Ct. App. 2003). A judge's charge to a jury is sufficient if, as a whole, it is substantially correct and covers the law applicable to the case. State v. Burton, 302 S.C. 494, 397 S.E.2d 90 (1990); State v. Jackson, 297 S.C. 523, 377 S.E.2d 570 (1989); State v. Rabon, 175 S.C. 459, 272 S.E.2d 634 (1980). A jury charge which is substantially correct and covers the law does not require reversal. State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996); State v. Hoffman, 312 S.C. 386, 440 S.E.2d 869 (1994).

"However, an instruction should not be given unless justified by the evidence." State v. Moultrie, 273 S.C. 532, 534, 257 S.E.2d 730, 731 (1979). "If a jury instruction is provided to the jury that does not fit the facts of the case, it may confuse the jury." State v Blurton, 352 S.C. 203, 208, 573 S.E.2d 802, 804 (2002). This Court will not reverse the trial court's ruling regarding jury instructions unless the trial court abused its discretion. State v. Williams, 367 S.C. 192, 195, 624 S.E.2d 443, 445 (Ct. App. 2005).

Analysis

In his brief, Weatherall cites to several different cases which stand for the proposition that a defendant has the Constitutional right to cross-examine a witness about potential bias. (IBOA, pp. 14-18). Respondent agrees with the holdings in each of these particular cases that a defendant does have the Constitutional right to cross-examine or confront a witness about possible or potential bias.

However, what occurred in the cases cited by Weatherall in his brief did not occur in this case. (Tr. pp. 268-89). Here, Weatherall was not prevented from cross-examining or confronting Marcus Bell about possible or potential bias. (Tr. pp. 268-89). Weatherall simply chose not to ask Bell about the possible or potential bias he now argues in his brief. (Tr. pp. 268-89). This is simply not a case about Weatherall being denied the right to effectively cross-examine, confront, or impeach a witness. (Tr. pp. 268-89). *See* State v. Lambert, 149 N.C. App. 163, 560 S.E.2d 221, 225-26 (N.C. Ct. App. 2003)("Failure to pursue the right to confrontation does not constitute a denial of the right to confrontation").

Instead, Weatherall is asking this Court to reverse his conviction for murder because Judge Culbertson declined to instruct the jury on a specific statute in his jury instruction at the close of the case. The cases Weatherall cites in his brief, do not hold that the defendant is entitled to a jury instruction on a specific statute in an attempt to impeach a witness or show bias. (See IBOA, pp. 14-18).

S.C. Code Ann. § 17-25-65 states:

§ 17-25-65 Reduction of sentence for substantial assistance to the State; motion practice.

(A) Upon the state's motion made within one year of sentencing, the court may reduce a sentence if the defendant, after sentencing provided:
  (1) substantial assistance in investigating or prosecuting another person,; or
  (2) aid to a Department of Corrections volunteer who was in danger of being seriously injured or killed.

(B) Upon the state's motion made more than one year after sentencing, the court may reduce a sentence if the defendant's substantial assistance involved;
  (1) information not known to the defendant until one year or more after sentencing;
  (2) information provided by the defendant to the State within one year of sentencing, but which did not become useful to the State until more than one year after sentencing;

(3) information, the usefulness of which could not reasonably have been anticipated by the defendant until more than one year after sentencing, and which was promptly provided to the Stat after its usefulness was reasonably apparent to the defendant; or
(4) aid to a Department of Corrections employee or volunteer who was in danger of being seriously injured or killed.

(C) A motion made pursuant to this provision shall be filed by that circuit solicitor in the county where the defendant's case arose. The State shall send a copy to the chief judge of the circuit within five days of filing. The chief judge or a circuit court judge currently assigned to that county shall have jurisdiction to hear and resolve the motion. Jurisdiction to resolve the motion is not limited to the original sentencing judge.

HISTORY: 2010 Act No 273, § 13, eff June 2, 2010.

S.C. Code Ann. § 17-25-65. The statute [§17-25-65] provides that *the Solicitor* in his or her discretion can move for a reduction in an inmate's sentence based on cooperation. Id. It is not mandatory but discretionary. Id.; Lisenby v. Jackson, 2013 WL 5707344, C/A No. 5:13-cv-2106 DCN KDW (D.S.C. 2013)(*Not Reported in F.Supp.2d*)(whether to file a motion pursuant to §17-25-65 is discretionary with the prosecutor and the court cannot issue a mandamus to force the prosecutor to file such a motion); *see also* Wade v. United States, 504 U.S. 181, 185, 112 S.Ct. 1840 (1992)(holding, in part, that a federal prosecutor pursuant to Fed. R.Crim.P. 35(b)(1) has "a power, not a duty, to file a motion when a defendant has substantially assisted."). And, ultimately, whether a sentence reduction is granted if such a motion is made by the Solicitor is within the discretion of the circuit judge hearing the motion. S.C. Code Ann. § 17-25-65; *See also* 18 U.S.C.A. § 5K1.1 (Thomson/West 2007)(Federal Sentencing Guidelines)(if the federal prosecutor makes the motion, the decision whether to allow it and reduce a defendant's sentence lies within the United States trial court). Regardless, Bell was not asked about §17-25-45 or whether he had been informed of the substance of the statute. (Tr. pp. 268-89). There was no evidence Bell knew about the statute. (Tr. pp. 268-89).

Weatherall is constitutionally entitled to jury instructions on every element of the offense charged [murder], and the failure to so instruct the jury violates the requirements of due process. *See e.g.* In re Winship, 397 US. 358 (1970); Solis v. Garcia, 219 F.2d 92 (9th Cir. 2000). However, failure to charge every element of the offense is subject to harmless error analysis. *See* Pope v. Illinois, 481 U.S. 497 (1987); Keating v. Hood, 191 F.3d 1053 (9th Cir. 1999). However, Weatherall is not constitutionally entitled to an instruction on S.C. Code Ann. § 17-25-65 in an attempt to impeach a witness.

Weatherall is no more entitled to a jury instruction on S.C. Code Ann. § 17-25-65 as a defendant is entitled to **jury instruction on prosecutorial discretion, i.e. that the prosecution could prosecute, reduce, or dismiss a charge against any witness who testifies during the trial who has pending charges.** Similarly, Weatherall is no more entitled to a jury instruction on 17-25-65 as he is to an instruction that accomplice testimony is to be viewed with suspicion, which has been rejected by our appellate Courts as a charge on the facts. State v. Steadman, 257 S.C. 528, 186 S.E.2d 712 (1972); State v. Mikell, 257 S.C. 315, 185 S.E.2d 814 (1971); State v. Pitts, 256 S.C. 420, 182 S.E.2d 738 (1971); State v. Taylor, 255 S.C. 147, 177 S.E.2d 550 (1970); State v. Bagwell, 201 S.C. 307, 23 S.E.2d 244 (1941); State v. Sowell, 85 S.C. 278, 67 S.E. 316 (1910), *other numerous citations omitted.* As this Court is well aware, under the South Carolina Constitution and case law, a charge on the facts is not permitted. "Judges shall not charge juries in respect to matters of fact, but shall declare the law." S.C. Const art. 5, § 21.; Smith v. Fitton & Pittman, Inc., 264 S.C. 129, 212 S.E.2d 925 (1975)(*abrogated by*, Dorrell v. South Carolina Dept. of Transp., 361 S.C. 312, 605 S.E.2d 12 (2004)).

As the South Carolina Supreme Court held in State v. Collins, 266 S.C. 566, 573, 225 S.E. 2d 189, 193 (1976):

> Defendant's next contention is that the trial judge erred in refusing to charge that the testimony of a codefendant should be carefully scrutinized and that the jury may consider whether the witness is fearful of retribution or has any hope of leniency from the prosecution. We think the trial judge's overall instruction that it was the jury's duty to pass upon the credibility of the testimony of witnesses, and that they could reject any part of the testimony if they found reason for doing so, was adequate. State v. Steadman, 257 S.C.528, 186 S.E.2d 712 (1972). Any further instruction on this point might have invaded the province of the jury to draw inferences from the evidence.

Id., at 573, 225 S.E.2d at 193.

Weatherall was certainly entitled to cross-examine Marcus Bell on whether he hoped for favorable treatment by the prosecution and Weatherall was entitled to know about any deal the State had with the witness and to probe the witness on the same. However, Weatherall simply chose not to pursue these subjects on cross-examination. (See Tr. pp. 268-89). Instead, he chose to impeach Bell through other avenues. (See Tr. pp. 268-89).

Instead of questioning Bell on cross-examination about the possibility of a future reduction in his sentence, where he would have had to accept Bell's answer, Weatherall argued extensively in his closing argument, that Bell was biased for this reason. Weatherall specifically argued in his closing argument that at some point in the future, Bell was hoping for favorable treatment by the State based on his cooperation and testimony in Weatherall's trial. (Tr. pp. 382-84).

It is noteworthy, Bell had already admitted on direct examination that when he originally wrote the letter to the Solicitor's Office detailing his knowledge of the case, i.e. exactly what he testified to before the jury, he was motivated by the desire for a reduction in his sentence. (Tr. 268-89). As a result, the jury knew that Bell's first revealing of the same matter he testified to before them was motivated by hope for assistance from the State in reducing his sentence.

Judge Culbertson instructed the jury at the close of the case that they were to determine the credibility of each witness and they were to determine credibility based on whether they [the jury] determined a witness had an "interest, bias, prejudice or other motive in this case." (Tr. pp. 391-92).

But Weatherall was not entitled to an instruction on the statute § 17-25-65 in an attempt to argue or prove bias or to impeach Bell, when there is no evidence Bell knew about the statute or had been promised a motion for reconsideration would be filed or made. Such a charge could constitute a charge on the facts and would be confusing to the jury. A judge may not instruct the jury in a manner which assumes the truth of facts needing to be proved. Butler v. Gamma Nu Chapter of Sigma Chi, 314 S.C. 477, 445 S.E.2d 468 (Ct. App. 1994). For example, as previously discussed, a requested instruction that the testimony of a codefendant or accomplice should be carefully scrutinized is properly refused as a charge on the facts. Collins, 266 S.C. 566, 225 S.E.2d 189. Judge Culbertson did not abuse his discretion in declining to instruct the jury on S.C. Code Ann. § 17-25-65. *See* United States v. Satterfield, 254 Fed. Appx. 957 (4th Cir. 2007)(*not reported in Federal Reporter 3d.*)(District Judge did not abuse his discretion in declining to instruct the jury on Rule 35, F.R.Crim.P. [sentence reconsideration or reduction rule based on substantial assistance] or declining to provide jury with a copy of the text of Rule 35, where defense counsel was able to cross-examine witness about his hope for sentence reduction). For the above stated reasons, there is no merit to Weatherall's argument. As a result, this appellate ground must be denied.

Harmless Error

Furthermore, any failure to instruct the jury on § 17-25-65 was harmless beyond a reasonable doubt. *See* State v. Middleton, 407 S.C. 312, 755 S.E.2d 432 (2014)(finding harmless error analysis is appropriate for the failure to give a jury instruction); State v. Battle, 408 S.C. 109, 757 S.E.2d 737 (Ct. App. 2014)(same);[13] State v. Bryant, 369 S.C. 511, 633 S.E.2d 152 (2006). "When considering whether an error with respect to a jury instruction was harmless, we must 'determine beyond a reasonable doubt that the error complained of did not contribute to the verdict.'" Middleton, *supra*, *quoting* State v. Kerr, 330 S.C. 132, 144-45, 498 S.E.2d 212, 218 (Ct. App. 1998). "In making a harmless error analysis, our inquiry is not what the verdict would have been had the jury been given the correct charge, but whether the erroneous charge contributed to the verdict rendered." Id., *citation omitted.* "Thus, whether or not the error was harmless is a fact intensive inquiry." Id. A fact intensive inquiry shows Judge Culbertson's not charging 17-25-65 was harmless.

Even assuming the Court had instructed the jury on §17-25-65, the jury would have been left with the same testimony from Bell, that *he* had not been promised anything by the State and *he* was not aware that his testimony could result in a reduction in his sentence. On cross-examination, Bell was not asked about §17-25-65 or whether he had been informed of the substance of the statute. (Tr. pp. 268-89). There was no evidence Bell knew about the statute. (Tr. pp. 268-89). On cross-examination, Bell was not asked about any promises made by the State, and was not asked if he hoped for a sentence reduction. (Tr. pp. 268-89).

[13] Our appellate courts have previously held the refusal to charge the jury with a requested instruction is subject to harmless error analysis. State v. Lee-Grigg, 374 S.C. 388, 649 S.E.2d 41 (Ct. App. 2007), *affirmed* 387 S.C. 310 (2010); State v. Jeffries, 316 S.C. 13, 21, 446 S.E.2d 427, 431 (1994)(harmless error analysis is appropriate where the error complained of is a "trial error" rather than a "structural defect" in the trial mechanism itself). *See also* Lee-Grigg, *Toal, C.J. concurring. Contra* State v Light, 278 S.C. 641, 664 S.E.2d 465 (2008).

The statute [§17-25-65] provides that *the Solicitor* in her discretion could move for a reduction in an inmate's sentence based on cooperation. S.C. Code Ann. §17-25-65. As a result, had the jury been instructed on §17-25-65, the jury would have only known that the Solicitor at some future time could move to reduce Bell's sentence for his cooperation, not that Bell was motivated to testify based on some hope of reduction to his sentence. And, the ultimate determination whether Bell received any sentence reduction would be determined by a judge, not the State.

Weatherall was attempting to impeach Bell with a jury charge on the contents of a specific legal statute which there is no evidence Bell, a prison inmate, knew about at the time of his testimony. (Tr. pp. 268-89). As a result, the failure to charge §17-25-45 could not have affected the verdict. As a result, if any error, it was harmless beyond a reasonable doubt.

Additionally, Weatherall attacked Bell's credibility in other ways including his prior criminal record, the length of his sentence, and that Bell was a jail house informant or snitch who had access to Weatherall's discovery. (Tr. pp. 268-89). And, Weatherall argued Bell's lack of credibility throughout his closing argument to the jury. (Tr. pp. 381-82; 383-84).

Furthermore, Bell had already admitted on direct examination that when he originally wrote the letter to the Solicitor's Office detailing his knowledge of the case, i.e. exactly what he testified to, he was motivated by the desire for a reduction in his sentence. (Tr. 268-89). As a result, the jury knew that Bell's first revealing of the same matter he testified to was motivated by hope for assistance from the State in reducing his sentence. Judge Culbertson instructed the jury they were to determine the credibility of each witness and they were to determine credibility based on whether they [the jury] determined a witness had an "interest, bias, prejudice or other

motive in this case." (Tr. pp. 391-92). *See* State v. Steadman, 257 S.C. 528, 542, 186 S.E.2d 712, 717 (1972)(there was no prejudice from the failure to give the requested instruction [that the jury had the right if not the duty to take into consideration any bias or prejudice or hope of reward that a witness might have] where the trial judge instructed the jury it was their duty to pass upon the credibility of the testimony of the witnesses and that they could reject any part of the testimony if they found good reason for doing so; the instruction clearly left to the jury the determination of the credibility of the testimony of the witnesses); State v. Bamberg, 270 S.C. 77, 240 S.E.2d 639 (1977)(similar); People v. Harrison, 106 P.3d 895 (Cal. App. 2005) (holding a pinpoint instruction on a **witness's expectation** of **leniency** was not required given the other general instructions on **witness** credibility); People v. Hovarter, 189 P. 3d 300 (Cal. App. 2008)(holding a pinpoint instruction on a **witness's** particular status as a **jailhouse informant** was not required given the other general instructions on **witness** credibility); United States v. Anekwu, 695 F.3d 967, 983-84 (9th Cir. 2012)(similar); Parra v. Lizarraga, 2018 W.L. 6835980, No. CV17-5946-VBF (KS), Report and Recommendation (C.D. Cal 2018)(*Slip Copy*)(*Only Westlaw Citation Currently Available*)(similar); Benson v. State, 105 A.2d 979 (Del. 2014)(jury instruction on credibility of witnesses, conflicts in testimony, and witness' conviction of a crime adequately guided jury as trier of fact and determiner of credibility and enabled the jury to perform its duty, therefore there was no plain error in not charging specific instruction argued on appeal).

As a result of all of the above, the failure to instruct the jury on 17-25-65 was harmless beyond a reasonable doubt. Middleton, 407 S.C. 312, 755 S.E.2d 432; Bryant, 369 S.C. 511, 633 S.E.2d 152; Kerr, 330 S.C. at 144-45, 498 S.E.2d at 218; Battle, 408 S.C. 109, 757 S.E.2d 737;

Lee-Grigg, 374 S.C. 388, 649 S.E.2d 41, *affirmed* 387 S.C. 310; Jeffries, 316 S.C. at 21, 446 S.E.2d at 431. Weatherall's conviction and sentence must be affirmed.

Other Suggested Appellate Issue

In his "Statement of Issues on Appeal," Weatherall lists the following as a fourth appellate issue: "IV. Does any of the court's errors, or a combination thereof, require a reversal of the Appellant's conviction and sentence?" (IBOA, p. iv). Since Weatherall makes no argument in his brief on this fourth appellate issue or submits any legal authority for the same, this appellate issue was waived and abandoned. (IBOA, pp. 7-18). To the extent this appellate issue is raised and argued in the other appellate issues, Respondent relies on its arguments and authority in response to the same as set forth herein.

CONCLUSION

For the above stated reasons, Weatherall's conviction and sentence for murder must be affirmed.

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March 8, 2019

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
The Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2017-002447

THE STATE,

Respondent,

vs.

MITCHELL MONROE WEATHERALL,

Appellant.

CERTIFICATE OF SERVICE

I, J. Anthony Mabry, counsel for the Respondent, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, addressed to his attorney of record: J. Falkner Wilkes, Esq., 114 Whitsett Street, Greenville, South Carolina 29601-3139.

I further certify that all parties required by Rule to be served have been served.

This 8th day of March, 2019.

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March 8, 2019

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Re: The State v. Mitchell Monroe Weatherall
Appeal from Horry County
Appellate Case No: 2017-002447

Dear Mr. Kitchings:

Enclosed for filing please find the original Initial Brief of Respondent and Designation of Matter, together with Proof of Service in the above-referenced case. If you should have any questions, please feel free to contact me.

Sincerely,

J. Anthony Mabry
Senior Assistant Attorney General

AJM:dmd
Enclosures
cc: J. Falkner Wilkes, Esq. (w/two copies of encls.)
The Honorable Jimmy A. Richardson, Solicitor 15th Judicial Circuit (w/copy of encls.)
Trisha Allen, Victim Advocacy Division (w/copy of encls.)