STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LAURI DANIELLE HOLLIS,

APPELLANT,

Appellate Case No. 2012-213139.

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Whether the court erred by refusing to direct a verdict of acquittal where the state's best evidence was that appellant remarked to someone in the common grounds of the apartment complex that the decedent was a "snitch," since this statement, even if heard and acted on, did not make appellant an aider and abettor and therefore responsible for the decedent's death where another man shot the decedent?

RESPONDENT'S COUNTER STATEMENT OF ISSUE ON APPEAL

Whether the trial court, viewing the facts and all reasonable inferences in the light most favorable to the State, properly denied Appellant's motion for directed verdict where substantial evidence, including eyewitness testimony that Appellant and others surrounded Victim immediately before he was shot, existed tending to prove the guilt of Appellant as to both murder and armed robbery.

RESPONDENT'S STATEMENT OF THE CASE

A Spartanburg County Grand Jury indicted Appellant, Lauri Danielle Hollis, in August 2011 for the murder of Steven Means (Victim) and for armed robbery. (R. p. 434). On October 1, 2012, Appellant's case was called to trial before the Honorable Roger L. Couch. (R. p. 1). Appellant was represented by Ryan McCarty during the three-day trial. (R. pp. 1–3). Appellant's co-defendant, Charles L. Anderson, Jr., was represented by Christopher Thompson. (R. pp. 1–2). Assistant Solicitors Abel Gray and Daniel Cude represented the State. (R. p. 1). On October 4, 2012, the jury returned a verdict of guilty on both counts against Appellant. (R. p. 428, lines 4–10). Judge Couch sentenced Appellant to be confined to the State Department of Corrections for a period of thirty (30) years for both convictions, with the sentences to run concurrently. (R. p. 430, lines 1–6). Thereafter, on October 8, 2012, Appellant filed a timely Notice of Appeal. (R. p. 433).

RESPONDENT'S STATEMENT OF FACTS

The Shooting

On April 7, 2011, Nicole Means, Victim's sister, came home after work to her apartment in the Oakview Apartments. (R. p. 49, line 6–p. 50, line 3; R. p. 62, lines 23–25). It was about 6:20 in the evening. (R. p. 49, lines. 22–25). As she arrived home, Means spotted her brother across the street, and she called out to him. (R. p. 49, line 23–p.50, line 8). He came over, and the two stood in the walkway outside her apartment talking. (R. p. 50, lines 5–15). At the time, Victim was wearing a striped shirt, khaki shorts, black tennis shoes, gold teeth, and a red hat. (R. p. 51, lines 2–15). Victim was also wearing a necklace with a cartoon character on it—the character was baby Stewie from the television show Family Guy. (R. p. 51, lines 11–15). The two parted, and Means went inside her apartment, but before the screen door closed behind her, she heard a noise like a firecracker. (R. p. 51, lines 16–23). She went back outside to see what was going on. (R. p. 51, line 25–p. 52, line 6). When she looked up the street, she saw her brother lying face down on the ground. (R. p. 52, lines 5–14). Means immediately ran to Victim, and when she got there, she saw that his hat, jewelry, and the top part of his gold teeth were gone. (R. p. 52, line 15–p. 53, line 9). The bottom part of his gold teeth was hanging out of his mouth. (R. p. 52, line 22–p. 53, line 3).

Police were first on the scene, and one of the officers, Lieutenant W.M. Foster began administering CPR to the Victim when he arrived. (R. p. 20, line 4–p. 22, line 17). Foster saw what appeared to be a bullet wound on the left side of Victim's chest where his heart would be. (R. p. 22, lines 4–10). Paramedics then arrived and took over rendering aid to Victim. (R. p. 43, line 12–p. 46, line 4). Though Victim did not have a pulse and was not breathing, the paramedics put him in their ambulance and continued rendering aid on the way to the hospital.

(R. p. 44, line 20–p. 45, line 20). After Victim died,[1] Officer Jennifer Watson with the Spartanburg Public Safety Department collected Victim's belongings from the hospital. (R. p. 126, line 11–p. 127, line 25). The items Watson recovered did not include a necklace or a large charm. (R. p. 127, lines 21–25).

The Investigation

Investigator Brian Stokes, who became the lead investigator in Victim's murder, responded to the scene of the shooting at 7:02 pm on April 7, 2011. (R. p. 279, line 18–p. 280, line 23). That night, he and other police officers canvassed the area and went door-to-door trying to find witnesses to the shooting. (R. p. 281, line 20–p. 282, line 14). They spoke with Means, some people who were in a car when the shooting occurred, Molly B. (a minor), and her friend, Latrica. (R. p. 282, lines 8–25). Using statements from those witnesses and other tips, investigators developed a list of potential suspects. (R. p. 283, lines 1–23). Investigators only had nicknames from the tips, but they were able to identify the real names of the potential suspects. (R. p. 283, line 21–p. 284, line 25). Appellant was one of the potential suspects. (R. p. 284, lines 21–25).

Police obtained warrants for the suspects on Sunday, April 10, 2011. (R. p. 303, lines 1–23). On Monday, April 11, 2011, they released the names of the suspects to the media. (R. p. 303, line 17–p. 304, line 2). Later that day, Appellant turned herself in and met with investigators. (R. p. 285, lines 7–16).

[1] Dr. David Wren, who performed Victim's autopsy, testified that Victim died of an "internal hemorrhage, secondary to a gunshot wound to the back." (R. p. 169, lines 15–22). Dr. Wren additionally testified that Victim sustained three gunshot wounds. (R. p. 169, line 24–p. 172, line 24).

Also on April 11, 2011, police went to Appellant's mother's residence to execute a search warrant. (R. p. 185, lines 11–20; R. p. 205, line 20–p. 207, line 3). Though they did not recover any items from the residence, officers obtained a purple shirt, a pair of khaki shorts, and a multi-colored belt from a vehicle that belonged to Appellant's mother. (R. p. 185, line 21–p. 186, line 16). According to the testimony of Sergeant Mark Hillers, Appellant's mother advised him that the clothing belonged to Appellant. (R. p. 186, lines 17–24).

The purple shirt and khaki shorts were transferred to the South Carolina Law Enforcement Division (SLED) where lab technician Ila Simmons tested the shirt for gunshot residue. (R. p. 215, line 12–p. 219, line 13). She found round lead particles on the shirt, indicating the presence of gunshot residue. (R. p. 219, line 8–p. 221, line 6). On cross-examination, Simmons testified that, in general, gunshot residue from a handgun would not travel farther than about four or five feet, but Simmons admitted that environmental factors could affect that. (R. p. 223, line 10–p. 225, line 11).

On April 12, 2011, Police recovered the gun used to shoot Victim[2] from Appellant's co-defendant's room at his mother's house. (R. p. 196, line 2–p. 203, line 25).

Testimony from Witnesses to the Shooting

At Appellant's trial, the State presented a number of witnesses who witnessed Victim's shooting.

Alice Carroll testified that she was sitting in a car in front of her apartment when she witnessed the following:

[2] Ira Parnell, a forensic examiner with SLED, opined that a bullet recovered from Victim's body was shot by the gun recovered from Anderson's mother's home. (R. p. 229, line 3–p. 237, line 6).

A. I seen the—the guy who—who got killed. I seen him come out of—out of his sister's apartment and ask somebody for a light or something.

And the next thing I know, it sounded like a firecracker pop. And he tried to walk away from them and the next thing I know he was over on the—on the other side dead.

Q. You saw him fall to the ground?

A. Yes, yes, sir.

(R. p. 100, lines 16–23). Carroll further testified that she saw two people walk up to Victim—one was heavyset with dreadlocks, but she could not tell if it was a man or a woman. (R. p. 101, line 14–p. 102, line 14). Carroll also testified:

> They—they came walking down the sidewalk when he was coming up the sidewalk. And I don't know if they had a gun or not. I don't know.
>
> But it sounded just like a firecracker. And when—when—when nobody—when they started walking up to him—when they walked up to him they popped—they popped him.

(R. p. 101, lines 18–23). Carroll could not identify anyone who she saw the day of the shooting in the courtroom during her testimony. (R. p. 102, line 3–p. 103, line 22). Carroll acknowledged that she wore glasses and was wearing them on the day of the shooting but that she did not bring them to court. (R. p. 103, line 23–p. 104, line 1).

Another witness, Perry Crain, testified that he saw "a man, he pulled—he shot a man and turned around and walked up the street and turned back to the left and went down the road." (R. p. 106, lines 2–4). Crain testified that he could not remember the face of the shooter. (R. p. 106, lines 5–17). However, he remembered giving a statement to police where he stated that the shooter had dreadlocks and was a black man wearing a black pullover shirt. (R. p. 107, line 16–p. 109, line 3).

On the day of Victim's shooting Molly B. was at the Oakview Apartments visiting her friend Latrica. (R. p. 67, line 14–p. 75, line 24). Molly B. testified that she and Latrica were sitting in her car when Appellant came over to talk to them. (R. p. 70, lines 11–14). Molly B. described the conversation she had with Appellant and Appellant's actions before and after Victim was shot:

Q. She was talking to you about what?

A. She had asked why I didn't get her anything but [sic] eat because we had a McDonald's bag. And then she started talking about some dude and was talking about how—I didn't really catch on to it; she was just like something about they were about to get somebody because somebody had snitched on somebody.

And I was like, "What are you talking about?" And, then, like she just walked away from the car.

. . .

Q. After she walked away from you, did you hear anything or see anything?

A. I saw a guy walking from another apartment down towards the fence. And like she was smacking at her face. And, then, the guys over here were kind of—they were ganging up in front of my car. They were coming together with her.

And she was acting like a bug was flying around or something. I'm not sure. Then, I looked down at—because I had a touchscreen navigation system and I looked down at it.

And, then, I looked back up and saw those guys. They were getting closer together. And I didn't really know what was going on.

I look back down at my radio. And, then, I heard a gunshot. And I looked up and he was falling to the ground and everybody was just kind of moving, like running away.

Q. Was Ms. Hollis anywhere near the—the gentleman that was shot?

A. Yes, sir.

Q. How close to him was she?

A. Well, when I looked up, they were just all like in a circle. And then they just scattered, like a circle around him.

I—I didn't see him until they moved. And he was falling to the ground.

Q. At least four (4) people?

A. Yes, sir.

Q. And one of them was Ms. Hollis?

A. Yes, sir.

Q. And do you recall what she said before this gentleman was shot?

A. She was talking about getting somebody, said that they been looking for somebody because he snitched and—on somebody. I'm not really sure.

(R. p. 70, line 15–p. 72, line 20). Molly B. testified that she did not see Appellant with a gun at the time of the shooting, but she identified Appellant's co-defendant, Anderson, as the man she saw with a gun that day. (R. p. 73, line 10–p. 74, line 19).

Testimony Regarding Appellant's Appearance Before and After the Shooting

At trial multiple witnesses testified that Appellant had dreadlocks before and on the day Victim was shot. (R. p. 64, line 21–p. 65, line 6; R. p. 75, lines 17–24; R. p. 114, lines 19–23; p. 162, line 18–p. 163, line 7). However, Victim's cousin, Anthony Kelly, saw Appellant at a party the weekend after the shooting and noticed that she had shaved her dreads off. (R. p. 116, line 10–p. 117, line 24). Kelly also noticed that Appellant was wearing "the same necklace that [his] cousin had on his neck." (R. p. 117, line 25–p. 118, line 7). Kelly noted that the necklace was very recognizable—"[i]t was Stewie from The Family Guy TV show. And it had different colored rubies in it. . . ." (R. p. 113, lines 16–22; R. p. 118, lines 4–11). Kelly also testified that

he had seen Victim wearing the necklace earlier in the day on the day he was shot. (R. p. 122, lines 11–21).

ARGUMENT

The trial court, viewing the facts and all reasonable inferences in the light most favorable to the State, did not err in denying Appellant's motion for directed verdict where substantial circumstantial evidence existed tending to prove the guilt of Appellant as to both murder and armed robbery.

Introduction

Respondent submits that the following evidence, which was presented to the jury, constitutes substantial circumstantial evidence that Appellant is guilty of aiding or abetting in Victim's murder and of armed robbery:

- Molly B.'s testimony that prior to Victim being shot Appellant told Molly B. that "they were about to get somebody because somebody had snitched on somebody[;]"
- Molly B.'s testimony that, as Victim was coming from another apartment, a group of guys, who Appellant had been talking to earlier, came together with Appellant in front of Molly B.'s car;
- Molly B.'s testimony that the group surrounded Victim and then a gunshot went off and the group scattered;
- other eyewitness testimony that a heavyset person with dreadlocks was involved in the shooting;
- evidence that Appellant had dreadlocks at the time of the shooting but shaved her head soon after;
- evidence that a shirt belonging to Appellant and retrieved by police just days after the shooting had round, lead particles on it, consistent with gunshot residue;

- evidence that Victim was wearing a recognizable necklace with a Stewie charm on it immediately prior to the shooting but that the necklace was gone immediately after he was shot and that Appellant was seen wearing the same Stewie charm two days later.

Viewing the facts and all reasonable inferences in the light most favorable to the State, the State has done more than "raise[] a suspicion that the accused is guilty." *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011).

Standard of Review

In reviewing a motion for a directed verdict, the trial judge is concerned with the existence of evidence, not with its weight. *State v. Curtis*, 356 S.C. 622, 633, 591 S.E.2d 600, 605 (2004) (citing *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)). In an appeal from the denial of a directed verdict motion, the appellate court must view the evidence in the light most favorable to the State. *Id.* (citing *State v. Burdette*, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999)). "If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury." *Id.* (citing *State v. Pinckney*, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000)). "Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error." *State v. Arnold*, 361 S.C. 386, 389, 605 S.E.2d 529, 531 (2004).

How the Issue Was Raised at Trial

At the close of the State's case, Appellant's counsel moved for a directed verdict on the armed robbery charge and asserted that the State had not met its burden because it had not presented any witness who saw anyone removing anything from Victim or taking and carrying

away anything from Victim. (R. p. 322, line 16–p. 323, line 25). Additionally, counsel pointed out that the State had not introduced any physical evidence, such as the necklace, that belonged to Victim but was not recovered from Appellant or anyone else. (R. p. 323, lines 16–22). Thus, counsel argued that there was insufficient evidence to go forward on the charge of armed robbery. (R. p. 323, lines 23–25).

Additionally, Appellant's counsel moved for a directed verdict on the murder charge. Counsel made the following arguments before the trial court:

> Your Honor, with regard to the hand of one is the hand of all, as the Court knows on—and I'm referencing the *Franklin* (phonetic) case from 1989, a State Supreme Court case, but in that they're talking about the prior knowledge of a crime.
>
> Even if you know that it's going to be committed, without more it's not sufficient to make a person guilty of that crime.
>
> "Mere knowledge that another person is going to commit a crime, even if they are present when the crime is committed, is not sufficient to convict them as a principal.
>
> "Guilt as a principal must be shown by actual, constructive presence at a scene as a result of a prior arrangement. Therefore, a finding of a prior arrangement, plan, or common scheme, is necessary to find guilt as a principal."
>
> Your Honor, in this case—and, again, I—what I read there was a—a request for charge that I had which came out of the request for charge publication that they submit throughout the bar and we're able to purchase. And that's quoting the *Franklin* case from 1989.
>
> But, in this situation here as well, Your Honor, I don't know that the State again has put forth and met its burden of proof as far as satisfying every element of the crime to—of murder under the accomplice liability theory to show to submit it to the jury for consideration, in that, they have established that there's no prior arrangement;
>
> That there is no theme or motive or anything like that which places her there and even participated and helped set it up or, by prior arrangement, be there.
>
> The only testimony that Molly [B.] provided was that apparently or supposedly Ms. Hollis said to her something about they are going to get Mister—or they're going to get the victim something about a snitch, to that effect.

> That doesn't denote a prior arrangement as to her reason for being there. It doesn't denote anything as far as her being part of a scheme or a plan to execute this.
>
> And, therefore, I think the State has failed to meet its burden of proof regarding the elements of this offense to charge her under accomplice liability as the hand of one is the hand of all.

(R. p.324, line 8–p. 326, line 2).

In response, the State asserted that it had presented enough evidence from which the jury could convict Appellant of both the armed robbery and of the murder, and the State asked the court to deny the motion. (R. p. 326, line 11–p. 328, line 1). Counsel for the State mentioned Molly B.'s testimony that Appellant and a group of guys came up to Victim and surrounded him, restricting his movements, before he was shot. (R. p. 327, line 21–p. 331, line 2). Appellant's counsel again argued that the State had not presented sufficient evidence to meet the elements of the crime and further pointed out that Appellant's presence at the crime scene could be explained as she was a resident of the Oakview Apartments. (R. p. 328, line 12–p. 332, line 3).

The court found that the State had presented sufficient evidence on the armed robbery charge. (R. p. 332, lines 4–14). Then the court took a short recess to review Molly B.'s testimony before ultimately finding "that the testimony [was] sufficient to indicate that the Defendant, Ms. Hollis, may have participated in an effort to restrict the movements of the victim allegedly." (R. p. 332, line 15–p. 333, line 10). Thus, the court found that there was sufficient evidence to go to the jury on both the murder and armed robbery charges. (R. p. 333, lines 11–14).

After Appellant's co-defendant presented his case, Appellant's counsel asked the court to reconsider his earlier motions. (R. p. 344, line 24–p. 346, line 4). The court stated that it reconsidered the motions and that its rulings would be the same. (R. p. 346, lines 5–7).

Analysis

In her brief, Appellant cites a number of South Carolina Supreme Court cases where the court found directed verdicts warranted based on the evidence that had been presented by the State. *See State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2011); *State v. Arnold*, 361 S.C. 386, 605 S.E.2d 529 (2004); *State v. Martin*, 340 S.C. 597, 533 S.E.2d 572 (2000); *State v. Schrock*, 283 S.C. 129, 322 S.E.2d 450 (1984). Respondent respectfully asserts that the evidence presented by the State in Appellant's case far exceeds that presented in the cases cited by Appellant.

In *State v. Bostick*, the victim was found bludgeoned in her house, which had been set ablaze. 392 S.C. at 136, 708 S.E.2d at 775. The court recited the following evidence that had been presented against Bostick:

> (1) [victim's] car keys, calculator, and other items from her home were found in the Bostick family's burn pile; (2) the fire in the burn pile was accelerated with either kerosene or diesel fuel, and Bostick's mother did not use those accelerants when she burned things in the pile; (3) Bostick had a pattern that matched gasoline on his shoes and gasoline was the accelerant use for the house fire; and (4) while the DNA from the blood on Bostick's jeans excluded about ninety-nine percent of the population, the blood could not be matched to [victim's] DNA.

Id. at 142, 708 S.E.2d 774, 778. In finding that a directed verdict was appropriate, the court noted there was no evidence linking Bostick to the crime scene or to the items found in the burn pile, nor was the weapon used to beat the victim ever introduced. *Id.* at 141, 708 S.E.2d at 778. Finally, though the State had theorized that the victim, who was treasurer for her church, was killed for the money she had at her home, the court pointed out that "no evidence was introduced concerning Bostick's knowledge that [the victim] may have had money in the briefcase or if indeed any money was in the briefcase on that particular Sunday." *Id.* at 142, 708 S.E.2d at 778.

In *Arnold* the victim was shot and his body was found off a dirt road in Colleton County. 361 S.C. at 388, 605 S.E.2d at 530. The car that the victim had been driving the last day he was seen alive was recovered in Johnson City, Tennessee, and a witness testified that Arnold called him the day after the victim was shot from Arnold's father's home ten miles from where the car was found. *Id.* at 389, 605 S.E.2d at 530. Arnold's fingerprint was found on a coffee cup lid in the center console. *Id.*, 605 S.E.2d at 530. The South Carolina Supreme Court found that such evidence "raise[d] a suspicion of guilt, but [was] not evidence that the respondent killed [the victim]." *Id.* at 390, 605 S.E.2d at 531.

Appellant also cited this Court's recent decision in *State v. Lane*, 406 S.C. 118, 749 S.E.2d 165 (2013) where the Court found that a trial court erred in granting a directed verdict in a first-degree burglary case where the State presented the following evidence:

> (1) the testimony of [victim's] neighbor that a burgundy/red "Mitsubishi Gallant-type car" with a paper tag and primer painted panel was in [victim's] driveway the day of the theft; (2) testimony that at times Lane drove a red/burgundy Mitsubishi Gallant belonging to his girlfriend that matched the description given by [victim's] neighbor; (3) testimony that a folded piece of paper belonging to Lane was found in [victim's] driveway that was not originally found by the police but found later outside; and (5) testimony that Lane did not want to talk to police officers the day after the theft and asked his girlfriend's mother to lie to officers concerning his whereabouts.

406 S.C. at 122, 749 S.E.2d at 168.

Appellant argues that

> evidence that appellant said to Molly B. that the decedent was a snitch, and walked away making a "strange" gesture before someone (Anderson) shot the decedent was not substantial evidence of her guilt. Neither was it substantial circumstantial evidence when coupled with evidence appellant allegedly was in possession of the decedent's stolen necklace at a party three or four days later, and the fact that she had gunshot residue on her shirt.

Final Br. of Appellant at 16. However, Appellant's synopsis of the facts omits some of the most incriminating facts against her. For example, in addition to testifying that Appellant made a

strange gesture before Victim was shot, Molly B. also testified that when she pulled up in her car, Appellant was talking with a group of guys, (R. p. 94, lines 11–13). According to Molly B.'s testimony, Appellant then told Molly B. about "get[ting] somebody because somebody had snitched on somebody."[3] (R. p. 70, lines 20–21). After Molly B. spoke with Appellant, she saw Victim walking from another apartment. She then witnessed the group of guys "gang[ ] up" in front of her car and "com[e] together" with Appellant. (R. p. 71, lines 14–18). Molly B. looked down, heard a gunshot, and then when she looked back up, she saw a circle of four people, including Appellant, around Victim. (R. p. 71, line 25–p. 72, line 15). Molly B. saw Victim falling to the ground and everyone else running away.

Respondent submits that the State presented sufficient evidence that Appellant aided and abetted in the commission of murder and armed robbery.

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

State v. Gibson, 390 S.C. 347, 354, 701 S.E.2d 766, 769–70 (Ct. App. 2010) (quoting *State v. Thompson*, 374 S.C. 257, 261–62, 647 S.E.2d 702, 704–05 (Ct. App. 2007) (internal quotations

[3] Molly B. testified, "she was just like something about they were about to get somebody because somebody had snitched on somebody." (R. p. 70, lines 19–20). According to Appellant, "they" means others, Initial Br. of Appellant at 17, but Respondent would point out that based on Molly B.'s testimony it is unclear whether Molly B. was including Appellant in the "they" or not. It could be that Appellant said "we are about to get the snitch" or "they are about to get the snitch" based on Molly B.'s use of "they," but the record does not reflect the exact words that Appellant used. It is, of course, possible that Appellant included herself in the group of people who she said were going to "get" Victim because he had snitched, but, at the very least, it is clear that Appellant was aware that the group of guys was going to "get" Victim.

and citations omitted)). Through Molly B.'s testimony, the State established both Appellant's presence at the scene and her prior knowledge of the plan to get Victim. However, Molly B.'s testimony also established Appellant's overt act toward the commission of the murder—in particular, she helped surround Victim before he was shot. As Judge Couch found, "the testimony [was] sufficient to indicate that [Appellant] may have participated in an effort to restrict the movements of the victim allegedly." (R. p. 333, lines 7–10). Eyewitness testimony of Appellant's actions in furtherance of the murder is substantial evidence tending to prove Appellant's guilt. Thus, the trial court did not err in denying the motion for a directed verdict on the murder charge.

Respondent would further note that other evidence presented by the State corroborated Molly B.'s testimony that Appellant assisted in Victim's murder—for instance, other eyewitnesses identified a heavyset person[4] with dreads as involved in the shooting, and there was gunshot residue found on one of Appellant's shirts. Also, other testimony established that Appellant had dreadlocks at the time of the shooting but that she shaved her head soon after the shooting. *See People v. Torres*, 179 A.D.2d 696, 696–97 (N.Y. App. Div. 1992) ("[Evidence of defendant's appearance at time of arrest] tended to show that the defendant was attempting to change his appearance in order to avoid apprehension which is relevant on the material issue of the defendant's consciousness of guilt.").

Respondent submits that this case differs greatly from the cases cited by Appellant where the Supreme Court found that directed verdicts were warranted. In contrast to this case where eyewitness testimony established Appellant's knowledge of and involvement in Victim's murder, many of the cases cited by Appellant lacked evidence linking the defendant to the scene

[4] One witness told police that it was a man with dreads who was involved in the shooting. Another witness was not sure if it was a man or a woman.

of the crime, *see State v. Bostick*, 392 S.C. 134, 141, 708 S.E.2d 774, 778 (2011) ("No direct evidence linked Bostick to the crime scene or the items found in the burn pile."); *State v. Arnold*, 361 S.C. 386, 390, 605 S.E.2d 529, 531 (2004) ("[T]here is no evidence respondent was at the scene of the crime . . . ."); *State v. Martin*, 340 S.C. 597, 602, 533 S.E.2d 572, 574 (2000) ("Most significantly, the State's evidence failed to place either defendant inside the apartment."); *State v. Schrock*, 283 S.C. 129, 132, 322 S.E.2d 450, 452 (1984) ("Nothing in evidence places Schrock at the scene of the crime."). Though the Supreme Court of South Carolina has explicitly rejected "the proposition that the trial court must grant a directed verdict if the State fails to present evidence placing the defendant at the scene of the crime[,]" *State v. Frazier*, 386 S.C. 526, 532, 689 S.E.2d 610, 613 (2010), Respondent merely points out this difference to highlight the disparity between the evidence presented in the cases cited by Appellant and the evidence presented at Appellant's trial.

As to the armed robbery charge, Respondent respectfully asserts that the State presented sufficient evidence to survive Appellant's motion for directed verdict. Through the testimony of Victim's sister, the State established that Victim was wearing his Stewie necklace immediately before being shot, but he was not wearing it when his sister found him on the ground. (R. p. 51, line 3–p. 52, line 21). The State also presented evidence that Appellant was seen wearing the necklace at a party the Saturday after Victim was killed. (R. p. 117, line 25–p. 119, line 5; R. p. 120, line 23–p. 121, line 4). The State did not present eyewitness testimony of anyone who saw Appellant take Victim's necklace. Even so, Respondent submits that the evidence presented at Appellant's trial exceeds that presented in *State v. Lane*, 406 S.C. 118, 749 S.E.2d 165 (Ct. App. 2013), because the State established Appellant's presence at the time Victim's necklace was taken (which presumably took place in conjunction with Victim's murder) and that Appellant

possessed the necklace two days later. Indeed, the evidence does more than "raise[] a suspicion that the accused is guilty." *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011).

In light of *Sandstrom v. Montana*, 442 U.S. 510 (1979), Appellant urges the court "that the fact a defendant was in possession of 'recently' stolen goods 'can be used as evidence that the defendant stole the goods,' should no longer pass the test of time. It is essentially a presumption that the defendant stole the goods because she was in possession of them."[5] Final Br. of Appellant at 16 (citing *State v. Washington*, 220 S.C. 442, 68 S.E.2d 400 (1951)). However, Respondent disagrees that any presumption is created by charging the jury (as Judge Couch did) the following:

> [I]f a defendant is found in possession of recently stolen goods, that fact can be used as evidence that the defendant stole the goods.
>
> This would simply be an evidentiary fact. It should be taken into consideration by you and considered along with all the other evidence in the case.
>
> You give it the weight you think it should have and decide, as I've charged you, in weighing any evidence in the case.

(R. p. 401, lines 1–10). Neither the burden of production nor the burden of persuasion was shifted to Appellant by the jury charge regarding Appellant's possession of the stolen property—it was simply another evidentiary fact for the jury to consider in determining whether Appellant was guilty of armed robbery. *See Shell v. Lewis*, No. C 11-2515 JSW, 2012 WL 3235798 at *10 (N.D. Ca. 2012) (citing *Sandstrom*, 442 U.S. at 523–24) ("If a jury instruction lightens the prosecution's burden of proof to something less than beyond a reasonable doubt by shifting the

[5] Respondent notes that the only issue pending in this appeal is the issue of directed verdict. Appellant has not challenged the jury charge regarding Appellant's possession of recently stolen goods. Nor was any such objection raised to or ruled upon by the trial court. Nevertheless, Respondent addresses this assertion as it does tangentially relate to Appellant's directed verdict issue.

burden of proof to the defendant, then that instruction violates the Due Process Clause of the Fourteenth Amendment).

CONCLUSION

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

Respectfully submitted,

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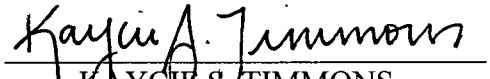
BY: 
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March 12, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LAURI DANIELLE HOLLIS,

APPELLANT,

Appellate Case No. 2012-213139.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007 Order of the South Carolina Supreme Court, "Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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PROOF OF SERVICE

I, Kaycie S. Timmons, counsel for the Respondent, certify that I have served the within Final Brief of Respondent and Certificate of Compliance on Appellant by depositing two (2) copies of the same in the United States mail, first class, postage prepaid, addressed to his attorney of record Robert M. Dudek at:

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

This twelfth day of March, 2014.

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