

 ORIGINAL

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions

Steven H. John, Circuit Court Judge

C.A. No. 2012-GS-26-2938

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SC Court of Appeals

Appellate Case No.: 2013-000336

The State of South Carolina. Respondent,

v.

Kareem S. Harry Appellant.

**FINAL BRIEF OF APPELLANT
KAREEM S. HARRY**

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STATEMENT OF ISSUES PRESENTED

Did the Circuit Court err in failing to direct a verdict of acquittal in favor of Appellant Kareem S. Harry where the record lacked direct or substantial circumstantial evidence proving Harry guilty of murder under the “hand of one is the hand of all” theory of accomplice liability?

STATEMENT OF THE CASE

The Horry County grand jury indicted Appellant Kareem S. Harry ("Harry") for the offense of murder on July 26, 2012. *See* Indictment. His case was tried before a jury on February 11-14, 2013, with the Honorable Steven H. John presiding. Ed Chrisco represented Harry. Assistant Solicitors Brad Richardson and Joshua Holford prosecuted the case.

The jury found Harry guilty of the offense of murder, under the hand of one hand of all theory of accomplice liability. Judge Stevens sentenced Harry to Thirty-One (31) years imprisonment. This appeal followed.

STATEMENT OF THE FACTS

The State's case against Harry was entirely circumstantial and rooted in an absurd theory that Harry masterminded an elaborate plan or scheme to kill Kevin Bowens ("Bowens") in retribution for stealing Harry's television. The evidence presented by the State consisted of testimony from three co-defendants charged in connection with Bowen's murder, none of which testified as to any knowledge of a plan concerning stealing, assaulting, or otherwise engaging in any illegal activity, or Harry's involvement in Bowens' death. The State also submitted testimony and evidence gathered by law enforcement during their investigation of the shooting, which support no more than Harry's mere presence during the shooting. Finally, the State submitted testimony from several witnesses who did not witness the actual shooting, unable to provide any evidence to substantiate the State's theory of the case.

Ashley Bledsoe

Ashley Bledsoe ("Bledsoe") was indicted as a co-defendant in this matter and

testified in the State's case against Harry under a proffer agreement. Bledsoe had an on-again-off-again relationship with Harry. He occasionally helped her financially, stayed in her apartment from time to time, and stored some of his belongings there including a plasma screen television. (R. p. 46, line 19.); (R. p. 52, lines 10-13.); (R. p. 53, lines 4-23.)

Bledsoe met the victim, Kevin Bowens ("Bowens"), on February 27, 2011. He picked her up at a gas station, and spent a night out on the town with Bledsoe and her roommate. (R. p. 50, line 15–p. 89, line 1.) Bowens slept at Bledsoe's apartment that night and, on the following morning, Bledsoe gave Bowens Harry's plasma screen television. (R. p. 52, line 7.); (R. p. 53, lines 9-19.) She testified that she gave Bowens the television with the intention of selling it after getting permission from Harry to do so. (R. 53, lines 17-24.) However, Bledsoe admitted that Harry did not know Bowens at the time of the transaction and was unaware that she was selling the television to Bowens. (R. p. 54, lines 2-7.) In fact, Bledsoe initially misled everyone in telling Harry that she sold the television to a girl and telling Bowens that the television belonged to one of her girlfriends. (R. p. 66, lines 16-21.) She further perpetrated her deception in text messages to Bowens pleading for the return of the television because "the girl was going to call the cops on me if I didn't get the TV back." (R. p. 67, lines 7-8.) She also texted to Bowens that she was "homeless. Please give me the money." (R. p. 67, line 19.) It was not until Harry sought return of the television or the money that she admitted to Bowens that the television belonged to Harry and that she needed to get it back. *Id.*

By March 1, 2011, Bledsoe and her roommate had moved out of their apartment and she had returned all of Harry's belongings to him with the exception of the television

or any proceeds from the sale of the television. (R. 53, lines 4-11.) At that point, Harry called Bledsoe about the television and they met at Waccamaw Hospital in Murrells Inlet, South Carolina, where Bledsoe first told Harry the truth that Bowens had possession of his television and where Bowens lived. (R. p. 54, line 20-p. 55, line 23.)

At trial, Bledsoe testified that, instead of going directly to retrieve the television from Bowens in Kings Grant, Harry went to his friends Tommy Byrne ("Byrne") and Saire Castro's ("Castro") apartment in Myrtle Beach immediately after picking her up from Waccamaw Hospital. (R. pp. 56-58.) Once they arrived at the apartment in Myrtle Beach, Bledsoe said that Harry went into the apartment alone for approximately five minutes and returned with Byrne and Castro in tow. *Id.* She acknowledged that she was not privy to any conversation between Harry, Byrne, and Castro. *Id.* She further testified that Byrne and Castro traveled in a different vehicle than she and Harry, and that they had no knowledge of where she was directing Harry to go. *Id.*

Bledsoe noted that Harry talked to Bowens prior to arriving at his home about getting the television back. (R. p. 58, lines 14-18.) When they arrived at Bowens' home, Harry, Byrne, and Castro got out of the vehicles within a minute of each other and, at Bowens' invitation, walked into his yard while Bledsoe remained. (R. p. 58, line 19-p. 59, line 1.) Bledsoe later got out of the vehicle and talked to Bowens about the details of the transaction, at which point Bowens indicated that Bledsoe had been lying about the situation. (R. p. 59, lines 2-10.) Bledsoe also admitted on cross-examination that she had texted Bowens prior to their arrival at his home accusing him of stealing money from her because he did not pay for the television. (R. p. 76, lines 1-9.)

Bledsoe next testified that Castro instructed her to return to the vehicle, and she

then heard gunshots as she did so. (R. 59, lines 12-14.) She and Harry ran to their vehicle and left Bowens' home. (R. p. 59, lines 14-17.) They were pulled over by the police shortly thereafter, and Harry ran away from the vehicle. (R. p. 60, lines 23-25.)

Tommy Byrne

Co-defendant Tommy Byrne was also indicted for Bowens' murder and testified in the State's case against Harry under a proffer agreement. He indicated that he and Castro resided in the same apartment. (R. p. 134, lines 14-22.) He further testified that Castro stored a revolver in the kitchen of the apartment above the cabinets. (R. p. 139, lines 8-20.) However, when additionally questioned about Castro's firearm, Byrne could only discuss the general "common knowledge" concerning whether Castro was known to carry a weapon, and could not specifically acknowledge that Harry knew Castro carried weapons or had the weapon on the day of the incident. (R. p. 143, line 19-p. 144, line 13.)

During his testimony, Byrne recalled Harry stopping by the apartment on the day of the shooting and having a conversation with Castro. Byrne admits that he did not hear the substance of the conversation, but estimated that Harry and Castro talked for approximately five to eight minutes. Then, Castro went over to the kitchen to ask Byrne if he wanted to take a ride with them. (R. p. 152, line 2-p. 156, line 14.) Byrne next testified that Harry left the apartment prior to the time Castro retrieved his firearm.

Q. So, Kareem and Saire [Castro] have had some kind of conversation for five to eight minutes?

A. Yes, Sir.

Q. How does that end?

A. As in Saire [Castro] comes up to me and asks me I want to take a ride.

Q. Okay, and you're still at the table at this point?

A. Yes, sir.

Q. And what do you do?

A. Get up and start heading out.

Q. Does Saire [Castro] go out in front of you?
 A. No, sir.
 Q. Where is he whenever you start to go outside?
 A. Walking into the kitchen.
 Q. So, he keeps on going into the kitchen ---
 A. Yes, sir.
 Q. ---where he's got his gun?
 A. Yes, sir.
 Q. How about Kareem [Harry], is he still in the house at this point?
 A. No, sir, he's in front of me going down the steps.
 Q. Okay, so you're heading towards the steps already and Kareem [Harry]'s in front of you?
 A. Yes, sir.

(R. p. 156, line 9-p. 157, line 10.)

According to Byrne, he learned that they were going to get Harry's television while on the drive to Bowens' home. (R. p. 160, lines 15-24.) When they arrived, the gentlemen exited the vehicles at approximately the same time and walk into the yard where Bowens joined them. (R. p. 165, lines 2-25.) Byrne then described the chaos that ensued over the following minutes. According to Byrne, Harry and Bowens were having a calm conversation until Bledsoe came over and confronted Bowens about the transaction. After a heated exchange between Bledsoe and Bowens, Harry told Bledsoe to return to the vehicle, and then Castro suddenly shot Bowens. (R. p. 168 line 20-p. 172, line 15.) Everyone ran back to the vehicles and left the scene of the shooting. While leaving, Byrnes recalled Castro acting anxiously and saying "What'd I just do." (R. p. 177, lines 6-9.)

Sage McPhail

Sage McPhail ("McPhail") was indicted for accessory to Bowens' murder after the fact and testified in the State's case against Harry under a proffer agreement. (R. p. 2233, line 18-p. 225, line 20.) McPhail indicated that he had a long-standing friendship

with Byrne and knew Castro well because he lived with Byrne. However, McPhail described his relationship with Harry as merely acquaintances, occasionally interacting since 2011. (R. p. 215, line 8-p. 223, line 12.) Although McPhail admitted his knowledge of Castro's possession and storage of firearms, he did not provide any evidence regarding Harry's knowledge of the matter. (R. p. 226, lines 9-24.) McPhail also recalled that he assisted Bledsoe in moving Harry's belongings out of her apartment and that he left his vehicle with Harry for his use on the day of the shooting because McPhail was performing maintenance on Harry's vehicle. (R. p. 227, line 10-p. 229, line 1.)

McPhail was not present at the scene of the incident and did not see Harry until after the shooting occurred. Harry had asked McPhail to replace the brakes on a vehicle earlier in the day, and McPhail was waiting at Harry's residence to return it. Harry was not there when McPhail arrived, so he fell asleep waiting for Harry to return. McPhail further testified that he was startled when Harry returned because Harry tapped on the window, informed McPhail that the police were in possession of his vehicle, and then Harry's brother dropped McPhail off at Byrne's residence. (R. p. 235, line 3-p. 242, line 1.) McPhail later assisted Castro in fleeing the area. (R. p. 243, line 14-p. 245, line 12.)

Law Enforcement and Other Witnesses

In its case in chief, the State also presented evidence regarding the police investigation of the shooting and other witness testimony. William Muldoon was one of the police officers that stopped the vehicles on the night of the shooting. He testified that Harry fled when he pulled the vehicle over, but he could not recall whether or not

Bledsoe explained that Harry fled because he had warrants. (R. p. 29, line 19-p. 30, line 2.) Jill Domogauer, a crime scene investigator with the Horry County Police Department, testified generally regarding the crime scene including the existence of a firearm inside the Bowens' residence. (R. p. 109, lines 6-23.) However, she admitted that the police did no forensic testing on Bowens' weapon. *Id.*

The other witnesses presented by the State consisted of neighbors and Bowens' girlfriend, none of whom witnessed the shooting. Shantel Lehman, a neighbor of Bowens, was taking out the trash and noticed Bowens talking with some people in his yard, but "didn't think anything of it." Then, she heard gunshots. (R. p. 117, lines 1-8.) She specifically clarified that Bowens was merely talking with the people in his yard, not arguing with anyone. (R. p. 125, lines 21-24.)

Brian McGarrahan testified that he was inside his home when he heard gunshots. (R. p. 204, lines 17-19.) He, then, went outside to assist Bowens and was joined by another unidentified person shortly thereafter. (R. p. 208, line 14-p. 209, line 4.) Although he could not recall whether he told the police at the time of the incident, McGarrahan testified that Bowens possessed a firearm that fell out of his waistband on the night of the shooting. (R. p. 209, lines 5-9.)

Christina Patterson and Bowens were in a romantic relationship. (R. p. 288, line 13.) She acknowledged that Bowens brought a television to their home on February 28, 2011, and indicated that he had purchased it from someone for a combination of cash and drugs. (R. p. 306, lines 17-23.) She further testified that, on March 1, 2011, Bowens received text messages from Bledsoe that he described as causing "drama" between him and Harry over the television. (R. p. 316, lines 3-24.) Although she was inside her

home when Harry and the others arrived, Patterson recalled the two vehicles pulling into the yard at a fast speed. She then acknowledged that Bowens invited Harry and the others into his yard with the firearm visible in his waistband. (R. p. 320, lines 20-22.); (R. p. 323, line 5-p. 324, line 13.) Patterson did not witness the entire event, but returned to her front yard when she heard gunshots. (R. p. 328, lines 19-25.) She attempted to assist Bowens and, at some point, removed his firearm, money, and drugs from the scene of the incident before the police arrived. (R. p. 332, line 2-p. 334, line 5.) She did not disclose this information to the police until August 2011, five months after the shooting. (R. p. 336, line 22-p. 337, line 24.)

Directed Verdict Motion

At the close of the State's case, Defense counsel moved for a directed verdict of acquittal based on the State's failure to present substantial circumstantial evidence of Harry's guilt of murder, under the hand of one hand of all theory of accomplice liability. Particularly, defense counsel argued that the State had not demonstrated that Harry aided Castro in any way in shooting Bowens, that there was no evidence in the record to fulfill the illegal purpose element of the charge, and that the State had not proven a common design and purpose. (R. p. 353, line 18-p. 354, line 3.)

The State argued that it had proven a common design or scheme by showing that Harry knew the location of the television, but went to Byrne's apartment first to get Castro and Byrne instead of going straight to Bowens' residence to get the television by himself. (R. p. 354, line 12-p. 359, line 12.)

The trial court determined that the State's case against Harry was circumstantial. (R. p. 361, lines 1-2.) The trial court found that the State had demonstrated substantial

circumstantial evidence in showing that Harry had an urgent need for the television or the money because he was on probation. The trial court further found that Harry went out of his way to recruit Castro, "a person common knowledge was that he carried a weapon," to accompany him to get the television. Additionally, the trial court found that after Castro shot Bowens in Harry's presence, Harry fled the scene. Accordingly, the trial court denied Harry's motion. (R. p. 361, line 6-p. 362, line 15.)

The Defense's Case

Saire Castro testified for the defense. Castro pled guilty to voluntary manslaughter for the shooting of Bowens and was sentenced to Thirty years imprisonment. (R. p. 365, lines 14-20.) In contrast to Byrne's testimony, Castro testified that it was Harry and Byrne who engaged in a conversation at the apartment, and that he only went with the two of them as a convenience so Byrne would have a ride home later that night. (R. p. 366, line 16-p. 367, line 2.) Castro explained that he did not find out where they were going or that they were going to get a television until they were driving over to Bowens' home. He further admitted that he shot Bowens without any prior discussion with Harry. (R. p. 367, line 3-p. 368, line 12.)

Harry testified in his own defense. He explained that Bledsoe sold his television without collecting any money and he met with her at Waccamaw Hospital to figure out how to resolve the situation. (R. p. 442, line 25-p. 444, line 23.) While Harry was with Bledsoe, he contacted Byrne to buy marijuana. (R. p. 445, line 22-p. 446, line 8.) However, before he could go to Byrne's apartment, Harry talked to Bowens and they discussed the television. (R. p. 447, lines 5-10.) Because Harry was not in a rush to get the television, he proceeded to Byrne's apartment where he got marijuana and made

arrangements for Byrne to help him return McPhail's vehicle later that night. (R. p. 447, line 10-p. 448, line 22.) Castro just happened to join them – Harry did not, specifically, invite him to come along. (R. p. 447, line 22-p. 449; line 1.)

When they arrived at Bowen's residence, the conversation was initially calm. Then, Bledsoe confronted Bowens about the television and the conversation escalated in intensity, at which point Castro told Bledsoe to get back into the vehicle. Harry turned to escort Bledsoe back to the vehicle, and then he heard the gunshots and saw Bowens fall to the ground. (R. p. 449, line 20-p. 457, line 1.) Harry further explained that they all left the scene of the incident in their vehicles, and when they were pulled over by the police, he ran because he did not want to face a probation violation. (R. p. 459, line 22-p. 460, line 3.) Harry's uncontroverted testimony was that he did not know Castro had a gun until he shot Bowens. (R. p. 499, line 15-p. 500, line 4.); (R. 506, lines 11-12.)

At the close of the defense's case, Defense counsel renewed the motion for directed verdict. (R. p. 514, lines 17-19.) Despite the State's failure to present substantial circumstantial evidence to prove the existence of any plan or scheme to commit an illegal purpose and its further failure to present substantial circumstantial evidence of Harry's participation in Bowen's shooting, the trial court again denied Harry's renewed motion for directed verdict at the close of his defense. (R. p. 514, line 23-p. 515, line 18.)

The jury convicted Harry of murder under the theory of hand of one hand of all accomplice liability. (R. p. 518, lines 9-15.); The trial court sentenced him to Thirty-one years imprisonment. (R. p. 528, lines 13-25.); Sentence Sheet (R. pp. 4-5.) This appeal followed.

ARGUMENT

Summary of Argument

Kareem Harry should have never been convicted of killing Kevin Bowens. Saïre Castro confessed to the tragic shooting of Bowens and admitted that he acted alone without any plan or cooperation from anyone else. The State knew these uncontroverted facts. Yet, on February 11, 2013, it proceeded to prosecute Kareem Harry for the very crime to which Castro confessed.

In its case, the State offered no direct evidence of Harry's involvement in the shooting. The State's case was purely circumstantial and failed to demonstrate essential elements of the offense, including the lack of evidence showing any common design and purpose to commit any illegal act when Harry met Bowens at his residence to discuss the return of a television. At the most, the State only presented scant circumstantial evidence indicating little more than Harry's mere presence during the commission of the crime by Castro. When defense counsel initially moved for directed verdict at the close of the State's case against Harry, the evidence before the trial court represented a mere suspicion of guilt. Defense counsel again sought a directed verdict of acquittal at the close of all evidence in the case. The trial court erred in denying each motion without a sufficient finding of substantial circumstantial evidence.

On February 14, 2013, Kareem S. Harry was convicted for a crime he did not commit by a jury that should have never had the opportunity to deliberate his fate. Instead, the trial court should have directed a verdict of acquittal in favor of Harry due to the State's failure to prove its case by substantial circumstantial evidence. For these reasons and the others discussed further below, the Court should reverse Harry's

conviction, and remand the matter back to the trial court with instructions to enter a directed verdict of acquittal.

The Circuit Court erred in failing to direct a verdict of acquittal where there was a lack of direct or substantial circumstantial evidence proving Harry guilty of murder under the “hand of one is the hand of all” theory of accomplice liability.

Where the State relies solely on circumstantial evidence, the trial court should submit the case to the jury only if there is substantial circumstantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced. *State v. Bostic*, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011) (citing *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)). “The jury weighs the evidence but when there is an absence of evidence, it becomes the duty of the trial judge to direct a verdict. Evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt.” *Id.* (citing *State v. Schrock*, 283 S.C. 129, 133-34, 322 S.E.2d 450, 452-53 (1984)). It is wholly insufficient to take the case to the jury when the evidence raises no more than a “mere suspicion” of guilt. *State v. Lewis*, 403 S.C. 345, 353, 743 S.E.2d 124, 128 (Ct. App. 2013). “Suspicion” implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof.” *State v. Buckmon*, 347 S.C. 316, 322, 555 S.E.2d 402, 404-05 (2001) (citing *State v. Lollis*, 343 S.C. 580, 541 S.E.2d 254 (2001)). If the State does not demonstrate substantial circumstantial evidence that the defendant committed the particular crime, the defendant is entitled to a directed verdict. *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011). “In reviewing the denial of a motion for a directed verdict, [the appellate court] must view the evidence in the light most favorable to the State.” *State v. Smith*,

359 S.C. 481, 490, 597 S.E.2d 888, 893 (Ct. App. 2004) (citing *State v. Kelsey*, 331 S.C. 50, 62, 502 S.E.2d 63, 69 (1998)).

It is well settled that a defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense. Under the “hand of one is the hand of all” theory, 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 and purpose. Under accomplice liability theory, a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act. In order to be guilty as an aider or abettor, the participant must be chargeable with knowledge of the principal's criminal conduct. Prior knowledge that a crime is going to be committed, without more, is not sufficient to make a person guilty of the crime. Mere presence at the scene is not sufficient to establish guilt as an aider or abettor. [Indeed, the] mere association with admitted members of a conspiracy is insufficient to tie other persons to the conspiracy.

State v. Mattison, 388 S.C. 469, 479-80, 697 S.E.2d 578, 584 (2010) (citations and quotation marks omitted).

This Court has repeatedly found that the showing of substantial circumstantial evidence is essential prior to submitting a case to the jury. Recently, in *State v. Rogers*, the Court examined the type of substantial circumstantial evidence required to warrant the denial of a directed verdict motion by a defendant charged with murdering his lover's husband. See *State v. Rogers*, 405 S.C. 554, 557, 748 S.E.2d 265, 267 (Ct. App. 2013). In affirming the trial court's denial of the defendant's motion for directed verdict, the Court noted that the State's evidence, although entirely circumstantial, was substantial enough to warrant sending the case to the jury. Particularly, the Court noted that the evidence against the defendant included (1) testimony of an ongoing affair; (2) detailed testimony concerning the defendant's plans with his lover to kill the husband; (3) eye witness testimony placing a truck of the color and model driven by the defendant at the

scene of the crime; (4) cell phone records indicating use of defendant's phone in the vicinity of the crime at the relevant time; (5) the co-conspirator's testimony regarding the defendant's involvement in the implementation of the plan to kill her husband; (6) phone records corroborating the co-conspirator's testimony regarding calls had with the defendant to set up her husband for the murder and to confirm that the murder had been accomplished; (7) the co-conspirator's testimony that the defendant cleaned his truck with bleach after the incident; (8) evidence that the defendant painted his truck after the incident; and (8) evidence that the defendant was in possession of the victim's watch. *Id.* at 565-67, 748 S.E.2d at 271-73. The evidence presented by the State against Rogers, while circumstantial, was such that his guilt could be fairly and logically deduced. Accordingly, the trial court's denial of the directed verdict motion in that case was appropriate and affirmed.

Conversely, in *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2011), the South Carolina Supreme Court reversed the trial court's denial of Bostick's directed verdict motion finding that the State "only raised a suspicion of guilt" that the defendant murdered his neighbor, Ms. Polite, and set her house on fire. *Id.* at 136, 708 S.E.2d at 775. The evidence presented at trial indicated that Ms. Polite served as her church secretary and frequently brought the Sunday collection funds to her home, which she shared with her son, for the bank deposit on Mondays. *Id.*

Ms. Polite's home caught fire one Sunday and she was found dead in her home. She had been stuck in the head, but officially died from the carbon monoxide cause by the fire. *Id.* Ms. Polite's son testified that he left the house and returned to see the house in flames. Investigators determined the fire originated in the son's bedroom using a

gasoline accelerant. *Id.* at 137, 708 S.E.2d at 776. Specifically as to Bostick, the State presented evidence that investigators found personal items belonging to Ms. Polite, including a watch and two sets of car keys in a burn pile on Bostick's next door property. The State also showed that Bostick had a pattern of gasoline on his shoes and gasoline was the accelerant used to start the fire at the Polite home. *Id.* However, DNA analysis of blood found on Bostick's jeans was inconclusive as to whether it came from Ms. Polite. *Id.* In its analysis of the case, the Court found that the evidence presented by the State was only of such quality as to merely raise a suspicion that Bostick may have committed the crime but it was not sufficient for the trial court to have submitted the case to the jury, and the Court reversed the trial court's denial of a directed verdict. *Id.* at 142, 708 S.E.2d at 778.

Similarly to the conclusion in *Bostick*, in *State v. Martin*, 340 S.C. 597, 533 S.E.2d 572 (2000), the South Carolina Supreme Court held that the State's presentation of circumstantial evidence was insufficient to withstand a directed verdict motion. In *Martin*, the State's case focused on placing the defendant near the scene of the murder through circumstantial evidence. The State presented a witness to establish that a car resembling the one that the defendant borrowed from his girlfriend was parked in front of the victim's apartment. *Id.* at 600, 533 S.E.2d at 573. The State also presented evidence that, on the morning after the murder, a manager of a restaurant found several bags of garbage containing items belonging to the victim near the bar where the defendant had been the prior night. Most interestingly, the defendant's girlfriend testified that, upon questioning his tardiness in picking her up from work, the defendant replied "some shit happened" and the co-defendant added "someone may have died tonight." Reversing the

trial court's denial of the defendant's motion for directed verdict, the Court held that the standard for substantial circumstantial evidence required more than a theory and coincidence amounting to no more than mere suspicion of guilt, but a showing of proof of the defendant's involvement in the crime to take the case to the jury.

The instant case does not approach the level of substantial circumstantial evidence found to be required to warrant the denial of a directed verdict motion as affirmed by this Court in *Rogers*. More interestingly, the evidence presented by the State in the instant case also fails to reach the evidence presented in *Bostic* and *Martin* – cases in which the South Carolina Supreme Court found the State's evidence to be qualitatively insubstantial to justify sending the cases to the jury for deliberation.

Instead, this Court now reviews a case where the State presented no evidence, substantial or otherwise, to support its outlandish theory that Harry masterminded a plan to murder Bowens over a television. At most, the State demonstrated that Harry and his friends went to talk to Bowens about returning or paying for the television that Bledsoe had given him, which by all accounts, undisputedly belonged to Harry. Even assuming that Harry and the other defendants actively engaged in this alleged plan, at no point in the trial did the State provide any proof that the plan involved a common design, plan, or purpose to commit any illegal act. The State's only evidence concerning this threshold element of the crime consisted of testimony from two co-defendants, Bledsoe and Byrne. Bledsoe could only testify that Harry went into Byrnes apartment for approximately five minutes. Byrne, however, indicated that Harry and Castro engaged in a five to eight minute conversation while in the apartment. However, neither witness could testify as to the substance of the conversation. Harry and Castro denied that they engaged in any

conversation, much less one related to Harry's intention to steal from, assault, or kill Bowens over a television. Instead, they both testified that Harry only held a conversation with Byrne when he entered the apartment.

Additionally, the State failed in its effort to submit substantial circumstantial evidence that Harry had any knowledge that Castro had a reputation for violence or that he was armed at the time of the incident. Although the State attempted to establish some general knowledge among their peer group regarding Castro's past incidents and propensities for firearms, the only evidence presented in the State's case in chief as to Harry's specific knowledge on the subject consisted of testimony establishing that Castro obtained his firearm that evening without Harry's knowledge. Byrne testified that Harry exited the apartment first, and that Castro did not enter the kitchen to retrieve the firearm until after Harry left the apartment. Furthermore, both Harry and Castro later testified that Harry did not know about the firearm until the actual shooting occurred.

Although the State attempted to establish Harry as the leader of an elaborate plan, the evidence at trial demonstrated that Harry simply got caught in the middle of a bad situation created by the dishonesty of Bledsoe and the unfortunate decision by Castro to carry and ultimately use a weapon. Here, "[t]he circumstantial evidence relied upon by the State is not substantial and merely raises a suspicion of guilt." *Buckmon*, 347 S.C. at 322, 555 S.E.2d at 405. The appellate courts of South Carolina have repeatedly recognized that the State fails to meet its burden of proof by showing evidence raising only the suspicion of guilt. Instead, the State must present substantial circumstantial evidence implicating the defendant in the crime to get past a directed verdict motion. The

evidence presented by the State at Harry's trial fell far below the standard showing of substantial circumstantial evidence required to withstand a directed verdict motion.

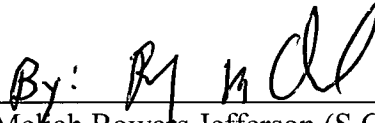
Although the State may have presented a large quantity of testimony and other evidence, the evidence failed to meet the requirements of substantial circumstantial evidence to withstand a directed verdict motion for acquittal. Unlike in *Rogers*, there is no evidence of a plan or scheme to commit any crime in Harry's case, much less a murder. Instead, like in *Bostic* and *Martin*, the evidence presented against Harry by the State can only be said to raise a mere suspicion of guilt insufficient to justify deliberation by a jury. Accordingly, the trial court erred in denying Harry's direct verdict motion.

CONCLUSION

In the instant case, the State presented no evidence – circumstantial or otherwise – of any plan or scheme to accomplish an illegal purpose involving Harry. The State presented no evidence regarding the substance of any conversation between Harry and Castro. The State attempted to establish some level of general knowledge on Harry's part regarding Castro's proclivities to firearms, however, there was no evidence presented at trial suggesting that Harry had any knowledge of Castro's possession of a firearm when they went to meet Bowens. Most significantly, Castro's unrefuted testimony was that he acted alone, without having collaborated in any plan or scheme to commit any illegal act with Harry, and that Harry had no knowledge Castro was even armed until after the shooting occurred.

For the foregoing reasons, Kareem S. Harry respectfully requests reversal of his conviction, and remand with instruction for entry of a directed verdict of acquittal.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions

Steven H. John, Circuit Court Judge

C.A. No. 2012-GS-26-2938

Appellate Case No.: 2013-000336

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SC Court of Appeals

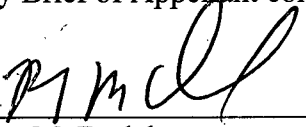
The State of South Carolina. Respondent,

v.

Kareem S. Harry Appellant.

Certificate of Counsel

The undersigned counsel for respondent certifies that the final Brief of Appellant and the final Reply Brief of Appellant complies with Rule 211 (b), SCACR.



Robert M. Dudek
December 8, 2014

THE STATE OF SOUTH CAROLINA

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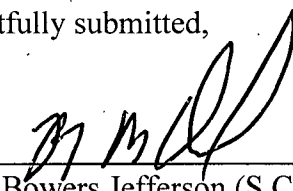
Kareem Harry.....Appellant.

CERTIFICATE OF SERVICE

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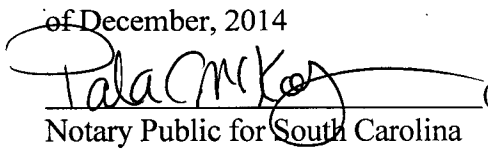
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SWORN TO BEFORE ME this 8th day
of December, 2014

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.