

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

The Honorable Thomas W. Cooper, Jr., Circuit Court Judge

Case No. 2015-002242

Henry Norris Johnson, Jr.,

.....Appellant,

v.

State of South Carolina. Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court judge err by denying appellant's motion for a directed verdict because evidence presented at trial was insufficient to support appellant's convictions for murder and burglary?
- II. Did the trial court err by allowing the State to introduce its ballistics evidence through the testimony of Lexington County officers when that testimony was rank hearsay and violated appellant's right to confront the witnesses against him?

STATEMENT OF THE CASE

Henry Johnson, Jr. was tried for Burglary 1st degree and Murder before the Honorable Thomas W. Cooper, Jr. and a jury between October 19, 2015 and October 22, 2015. He was represented by Jerry Screen, Esquire. The State was represented by Shawn Graham and Gil Bell of the Lexington County Solicitor's Office. Johnson was found guilty, and sentenced to 30 years on each count, to be run concurrently.

The appeal timely follows.

STATEMENT OF RELEVANT FACTS

Henry Johnson, Jr. (also known as "Jr." or "Jay") was convicted on the self-serving testimonies of his two so-called co-defendants, Patrick Larry and Justin Washington, who repeatedly lied to law enforcement in connection with the shooting death of M.M., a drug dealer and gambler in a small community located at the intersection of Lexington, Calhoun, and Orangeburg counties. In exchange for their convenient testimonies, Larry received a seven (7) year sentence. Washington, the admitted trigger-man, received twenty-five (25) years.

I. A BRIEF REVIEW OF LAW ENFORCEMENT INTERVIEWS OF HENRY JOHNSON, JR.

During a *Jackson v. Denno*¹ hearing at trial, Officer Charles Lint, the sergeant over investigations in the major crime unit, testified to his and Officer Collins's contacts with Henry Johnson Jr. prior to his arrest. R.p. 65. Lint was involved in the investigation of the home invasion and shooting death of M.M. at 498 Calhoun Road in Swansea, South Carolina.

On February 16, 2012, he had occasion to speak to Henry Johnson, Jr. He and Detective Steve Collins traveled to Orangeburg to meet with him. They spoke to him at a flea market. At that point, Lint testified they did not have a warrant for his arrest. Johnson told the officers that he had been at a basketball game in Columbia, SC. He was with Patrick Larry and Justin Washington. When he finished the game, he went back to his house in Denmark, SC and played video games. Their conversation lasted for about fifteen minutes. R.p. 70. Officer Lint testified that he did not consider Johnson to be a suspect. R.p. 71.

Detective Steve Collins also testified at the *Jackson v. Denno* hearing. At the time of these events, he was a detective in the major crimes unit supervising a unit known as the Ghost Team. R.p. 72. Contrary to Lint's testimony, Collins testified that Johnson was a suspect, R.p. 73, when they met with him on February 16 2012. The interview spot, in Orangeburg had "no relationship" to the Lexington County Sheriff's Office. R.p. 74. He

¹ 378 U.S. 368 (1964).

testified that he did not believe he had probable cause to obtain an arrest warrant for Johnson at the time of this conversation. R.p.p. 74-75. When they spoke, Johnson was in the police car, in the front passenger seat. R.p. 75. They had spoken outside of the car for a few minutes, too. R.p. 76. They were armed, but it did not "cross [his] mind to touch [his gun]." R.p. 76. Collins testified that they told Johnson that they had already spoken to Patrick Larry and that Larry had provided them information that Johnson could provide Larry an alibi. R.p. 77.

Collins spoke to Johnson again later on February 24, 2012. Collins testified that at that point they had arrest warrants for his involvement in the case. R.p. 79. Collins received a phone call from Attorney Jerry Screen, Johnson's trial counsel, and they coordinated Johnson's surrender to law enforcement. R.p. 80. When he and Screen arrived at the sheriff's department, they conducted another interview. Johnson still maintained that he was not involved with the home invasion and shooting death of M.M. R.p.p. 83-84. Collins informed Johnson that Patrick Larry's mother told law enforcement that she heard Johnson's voice present at her house the night that M.M. was shot. Johnson told Collins that he must have been on a speaker phone. R.p. 84. This interview lasted for approximately 20 minutes. R.p. 85.

Henry Johnson, Jr. has consistently maintained he is innocent of these crimes.

II. THE TRIAL

The State began its case by calling Melissa ("Lisa") Carr as a witness. R.p. 114. She was a long-time crack addict who also drinks heavily. R.p. 116. In 2012, M.M. was her

drug dealer. R.p. 117. She also had a sexual relationship with him. R.p. 117. In addition to the illegal drug dealing, Carr testified the Swansea home was also a place where people came to gamble. Apparently a significant amount of money moved through that home. R.p. 118.

Q: Okay. Now, did you ever see money that was involved with those games?

A: Yes.

Q: Do you remember how much they would bet?

A: It would be a lot of money. I don't know the exact amount.

Q: At times was there a lot of cash in that house?

A: Oh, yeah.

R.p. 118, ll. 17-24.

The house where M.M. was killed was owned by "Dominique." R.p. 118. On the day of the shooting, Carr had gone to the house twice. During her first visit, she helped him clean and he paid her with crack cocaine. R.p. 123. She was there for an hour or two. R.p. 123. She then stood outside smoking a cigarette when she saw a black car pull into the drive way and stop. She thought it was "the law." R.p. 124. The doors opened quickly, then closed quickly and the car sped off. She testified she was "pretty sure" the car had four doors and tinted windows. R.p. 124. It "kind of scared" her and she was "suspicious." R.p. 124. On cross-examination, she testified this happened around 3:00 or 4:00 in the afternoon. R.p. 146. She left the house that day, but did not recall where she

went. R.p. 124. She returned to the house that evening. Pam Tyler drove her and Karen Nettles ("Pocahontas") back to Dominique and M.M.'s house. R.p. 125.

When they returned to the house, there was another male at the house. He was a light skinned black man. According to Carr, M.M. did not seem bothered that he was there. R.p.p. 125-26. He left shortly after they arrived. Then, they started smoking crack cocaine again, and drinking. R.p. 126. Carr testified she was "a little bit" high. R.p. 126. Another car pulled up to the house. She testified that it was the same car that pulled up earlier. R.p. 126. She picked up M.M.'s pistol from his bed, and stuck it into her pants at the small of her back. R.p. 127. M.M. walked by her, felt the gun in the small of her back and took it from her. He placed it in his holster. R.p. 128. They continued getting high.

Later, someone knocked on the door to purchase marijuana. R.p. 128. This male stayed at the house for approximately 5 minutes. R.p. 129. He was an African-American male, tall and skinny. Carr testified she had seen him before. R.p. 129. Then, they went back to smoking crack cocaine.

About 30 minutes to an hour later, someone knocked on the door. R.p. 130. According to Carr, M.M. opened the door and the door opened really quickly. She saw a gun and dropped to the floor. Pocahontas also dropped to the floor. She heard a male say, "give it up." M.M. said, "oh, man." M.M. pulled out his pistol and the guy who entered the house shot him in the leg with a shotgun. R.p. 131. Carr testified that the gunshot occurred "within seconds" of the door opening. R.p. 131. She testified that she heard one shot. R.p. 132. She did not see the shooter remain in the house. R.p. 133. She walked over

to where M.M. had fallen on the floor and saw that he was still alive and breathing. R.p. 133. She took his gun, and then she and Pocahontas hid in a closet. R.p. 134. Carr testified that someone, never identified in this case, came and picked up Pocahontas. R.p. 136. Carr then looked for a telephone in the house. She came across some money and crack and put it in her pocket. R.p. 136. She went to a house across the street and called 911. R.p. 137. She left the scene before law enforcement arrived. R.p. 138.

Carr testified that she spoke to law enforcement the next day, as she and Pocahontas were walking along a road. R.p. 138. She told law enforcement that the shooter looked like "Pat." R.p. 138. She was given a photo line-up, and she identified Patrick Larry as the shooter. R.p. 139. She had seen him at another drug dealer's house before, and at M.M.'s house "maybe once or twice" before, too. R.p. 139. Before she testified at trial, she told law enforcement that the shooter looked like "Spider's cousin." R.p. 140. Carr testified she took M.M.'s pistol and threw it into the woods. R.p. 141. On the night of the shooting, Carr testified she had smoked "two twenties" of crack cocaine. R.p. 145. She also testified that the shooter was the same person who earlier purchased marijuana. Also, the marijuana purchaser was not wearing a hat; the shooter was wearing a "stocking cap" with a bill on it. R.p. 149.

The State called Investigator Brian Burrell, an investigator with the major crime unit for the Lexington County Sheriff's Office. R.p. 151. He kept the crime scene log. R.p. 152. He testified that he arrived at the scene at 2:52am. R.p. 153. He found M.M. lying on the floor in the kitchen. R.p. 156. They found one shell casing. R.p. 158.

Dr. Janice Ross was the State's pathologist. R.p. 182. She performed the autopsy on M.M. R.p. 164. She testified that M.M. was shot with birdshot. R.p. 166. The birdshot caused a laceration of the femoral artery and M.M. bled to death. R.p. 167.

Investigator Steve Collins with the Lexington County Sheriff's Department testified for the state. He responded to the incident location. There, he observed M.M. on the floor of the kitchen. R.p. 193. He noticed a .20 gauge shotgun shell on the floor. He spoke to neighbors and found out that Dominique Duckson owned the house. R.p. 194. Collins spoke to Duckson and confirmed that he had been at a concert in Columbia, SC when the shooting occurred. R.p. 195. According to Collins, both Carr and Duckson provided the name of someone who looked like "Spider" named Caesar Johnson. Caesar Johnson has a brother named Shannon Johnson which is who Carr told law enforcement looked like the shooter. R.p. 196.

Law enforcement attempted to speak to Shannon Johnson. They were informed that Shannon was trying to avoid them because he did not want to be arrested. R.p. 198. An "individual on the street" mentioned Patrick Larry as someone who was involved in the case. R.p. 198. Eventually, Shannon provided Patrick Larry's name to law enforcement. R.p. 198. Shannon provided an alibi. They spoke to Shannon's girlfriend, Genesis Pierson, and she told them that Shannon was with her that night. R.p. 199. Law enforcement then ceased considering him as a suspect.

Law enforcement then developed a photographic line up and showed it to Carr. She identified Patrick Larry out of the lineup. R.p. 199. She identified him as both the person

who purchased the marijuana and the shooter. R.p. 199. Based on that, Collins obtained a search warrant for Patrick Larry's house. They executed the warrant on February 15, 2012, three days after the shooting. R.p. 200. Patrick Larry was there with his mother, Mary Porter and the mother of one of his children. They interviewed Larry, and he denied any knowledge of the incident. R.p. 200. Since the search warrant was in the jurisdiction of the Calhoun Sheriff's Department, the officers allowed that department to handle the simple possession of marijuana charge that resulted from their search of Patrick Larry's house. R.p. 202.

As the Lexington County officers travelled back to their office, they received a call from Lieutenant Henry Dukes with the Calhoun County Sheriff's Department who had taken Larry into custody based on the marijuana that was found pursuant to the search warrant. He told them that Patrick Larry let him know that he wanted to speak further with the Lexington County Sheriff's Department about his knowledge and involvement with M.M.'s death. R.p. 202. They spoke again with Patrick Larry. After that, they developed Henry Johnson, Jr. and Justin Washington as suspects. R.p. 203. Collins testified that Johnson's house was approximately a 4-5 minute drive from Patrick Larry's house, and that Patrick Larry's house was about 8-10 minute drive from M.M.'s house. R.p. 210. Justin Washington lived in Denmark, SC, approximately 40 minutes from M.M.'s house. R.p. 211. During cross-examination, Collins testified that Patrick Larry told him they went to M.M.'s house after 11:00pm to buy marijuana. R.p. 227. Then, according to him, after midnight, he, Johnson and Justin Washington went back to the house to commit

the robbery. R.p. 227. Collins admitted that the only evidence he had that Johnson was involved in this crime was the two statements by his co-defendants, Patrick Larry and Justin Washington. R.p. 229.

Patrick Larry testified for the State. He ultimately received a 7 year sentence for his participation in the murder of M.M. Larry testified that he had known Henry Johnson Jr. for ten to fifteen years. They are cousins. R.p.p. 236-37. Before these events, he had known Justin Washington for about a year. R.p. 238. He met Washington through Johnson. Johnson knew Washington from college. Johnson was on the basketball team, and Washington was the manager for the team. R.p. 240. To Larry, it seemed that Johnson and Washington were close. R.p. 240. On this night, Larry testified he watched Johnson play basketball. He thinks the game was in Denmark. R.p. 241. (On cross-examination, he said it was in Columbia. R.p. 268). After the game, he went home.

Later that evening, he received a phone call from Johnson. R.p. 242. He said that he and Justin were coming to his house. They arrived between 10:00 and 11:00pm. R.p. 243. According to Larry, they talked about a concert that night in Columbia. R.p. 244. Then, they left the house and bought marijuana. Johnson drove his dark green Honda Accord. R.p. 244. They went to M.M.'s house to buy the marijuana. R.p. 245. Afterwards, they went back to Patrick Larry's house. R.p. 248. Larry testified the three of them went to his room. Justin asked Patrick Larry who was at M.M.'s house. R.p. 248. According to Larry, Johnson said it would be "an easy lick" because the people from the house were going to a concert. R.p. 249. Larry testified that Johnson said there would be a lot of cash

at the house. R.p. 250. The plan was to go and rob M.M. Larry testified that Johnson volunteered for Washington to do it. R.p. 251. Larry testified that Johnson told Washington to get the shotgun. They discussed this in the bedroom. R.p. 252. In the car on the way to M.M.'s house, Johnson, according to Larry, showed Washington how to conceal a weapon. R.p. 252. Larry testified that Johnson told Washington to use the name "Rollo" when he went to the door because that would be a name that M.M. would recognize. R. 254.

Larry testified he observed Washington walk up to the house and enter it. He heard a female scream, and then a gunshot. Then, he saw Washington run out of the house. Washington ran up the road, and they picked him up. Washington appeared jittery when he got back in the car. He said he thought he shot him. They then returned to Larry's house and dropped him off. According to Larry, Johnson and Washington said they were going to the gas station to get gas. R.p.p. 256- 58.

The next night, law enforcement came to Larry's house. After their second trip to his house, and after the execution of the search warrant, he was taken into custody on the marijuana charge. Larry testified he changed his mind about speaking to law enforcement, after initially declining to, because "two females had already picked [him] out of the lineup as being the shooter." R.p. 262. Larry testified he told law enforcement about Johnson because he was the only one who could confirm that he did not shoot M.M. R.p.p. 258- 63.

In late June, 2012, Larry testified that he finally told law enforcement the truth. Larry was charged with murder, armed robbery, and burglary in the first degree. At one

point during the investigation, both Larry and Washington, with their attorneys, met with law enforcement to discuss the case. R.p.p. 263- 64. They were together as they discussed the case with the investigators.

On cross-examination, Larry testified he had no idea of the presence of a shotgun until he got in the car. R.p. 288. He also testified he had no idea there was a pistol in his house that law enforcement confiscated when they conducted their search warrant. R.p. 287. Larry has a conviction for possession of cocaine that the judge instructed the jury could be assessed for its relevance to his credibility. R.p.p. 294- 95.

The State called Patrick Larry's mother, Mary Porter, to testify. She testified that on the night of February 11, 2012, she went to church. She returned home, put her pots on the stove so she could cook dinner. R.p. 301. The church gathering started at 7:00. R.p. 302. She believes that she returned home around 11:00pm. She fell asleep on the couch. Her husband woke her up to have her cut the stove off. She heard her son, Patrick Larry talking. She asked if he was talking to himself and he said, no, that he talking to "Jay." She did not see her son because he was in his room. R.p.p. 303-304. Porter testified that she said, "What's up, Jay" and that he responded, "Chillin, chillin, chillin." She testified that she knew his voice. That was the extent of their speaking to one another. She turned off the pots and then went to bed. R.p. 304.

On cross-examination, Porter acknowledged that she did not see a little Honda at her house. R.p. 307. Also, she has no idea what time she heard what she believed was Jay's voice. R.p. 309.

The State recalled Investigator Steve Collins. R.p. 315. Johnson's telephone number was stored in Patrick Larry's telephone. R.p. 319. After Collins interviewed Johnson, he returned to speak to Larry about their conflicting accounts of that evening. Larry told Collins that he, Johnson, and Justin Washington were together at his house prior to the shooting, and that Porter interacted with Johnson. R.p. 323.

Investigator Collins travelled and met with Justin Washington's parents. They were unwilling to state that Washington had been with them on the night of the shooting. R.p. 325. Collins asked them about a .20 gauge shotgun. Washington's father informed them that he owned one, and he turned it over to law enforcement. R.p. 326. They logged the shotgun into evidence. R.p. 327.

Law enforcement sent a shell from the scene and the shotgun to the Richland County Firearms Examination Unit. They determined it was a match. R.p. 329. After that, they obtained warrants for the arrests of Johnson and Justin Washington. R.p. 329.

Washington gave a statement to police at that time, and he admitted to shooting M.M. He implicated Larry and Johnson in planning to rob the house. R.p. 330. They spoke to Johnson, too. He has consistently maintained that he was not involved in the shooting at all. R.p. 331. He informed law enforcement that Porter must have heard his voice over a speakerphone. R.p. 333.

After their arrests, law enforcement continued to monitor jail phone calls. R.p. 334. Officer Collins also acknowledged that he was aware of a letter written by Washington to Ladovia Washington denying that Johnson was involved in these events at all. R.p. 345.

Collins also acknowledged, on cross-examination, that they spoke to Washington seven times after M.M.'s shooting death. R.p. 347.

Will Herring, of Securus Technology, a call management company that provides equipment and monitors equipment for detention centers, testified. R.p. 355. He stated there were numerous calls between Johnson and Washington while Washington was housed at the Lexington County Detention Center. R.p. 364.

Justin Washington testified. He received a twenty-five year sentence for actually shooting and killing the victim. In February 2012, he lived in Denmark, SC with his mother and father. R.p. 391. Johnson helped him get a volunteer job as a trainer with the basketball team at Voorhees College in Denmark, SC. R.p. 393. They were very good friends. R.p. 395. During his testimony, it was revealed that Washington has previous convictions for giving false information to the police and receiving stolen goods. R.p. 397.

Washington testified that Johnson and two other guys were at his house playing a game. Johnson allegedly told him that a guy named "Nice" called him and told him that "Matt" had flashed a hundred thousand dollars in his face and that they were going to rob him. R.p. 399. Washington then agreed to go and get his father's shotgun. R.p.p. 400-401. When he returned, Johnson and the two teammates got into the back seat of the car. Johnson dropped off the teammates, and they went to Larry's house. R.p. 402. These other "teammates" were never called as witnesses to corroborate Washington's testimony. Larry entered the house to buy marijuana and to scope out persons present at the house. Then, they drove around the block. R.p. 405. Afterward, Larry entered the house to buy

additional marijuana and to see who was there. They circled the block again. They stopped the car, and Washington retrieved his shotgun from the trunk. R.p. 406. Washington walked up the house and knocked on the door. M.M. answered the door. Washington pointed the shotgun at him and asked for his money. M.M. pushed the door back and ran towards the kitchen. Washington followed him. Then, Washington shot him as M.M. was grabbing for his own gun. R.p. 408.

After he shot him, Larry ran out of the house. He ran down the road, and, according to Washington, Johnson picked him up. R.p. 408.

After this, they dropped Larry off. Then they travelled to Swansea to the Little Cricket. As they were there, they saw a number of rescue squad cars driving past with their lights on. R.p. 409. They drove back to Denmark, and Washington replaced his father's shotgun. R.p. 409. According to Washington, Johnson suggested that Washington not talk to the police. R.p. 410. He also suggested, according to Washington, that he take the murder rap for him because he was planning to travel overseas to play basketball. He told him that he would take care of him, make sure he got a good lawyer, and kept money for him in the commissary. R.p. 411. He also allegedly wrote him letters asking him not tell the police of his involvement. R.p. 418. Washington read one of these letters to the jury. R.p. 423. On cross-examination, Washington admitted that he spoke to the law enforcement officers "to help myself." R. 445, l. 3.

The State called Washington's father to the stand to testify that it was "out of character" for Washington to be involved in a "home invasion, burglary and murder." R.p.

451, ll. 12-22.

Dominique Duckson, the owner of the house where M.M. was killed, testified. R.p. 478. The state offered him immunity for any "drug related things or other illegal activities" that took place at the house on and around February 11, 2012. R.p. 481. He admitted that gambling and drugs were going on at the house, and that he is a drug dealer. R.p. 482. The State called him to show that he believed Johnson was "a people person" and "highly intelligent." R.p. 489. He admitted on cross examination that he did not really know Johnson or Washington that well:

Q: In fact, Dominique, you never were in the company of Justin Washington and Henry Johnson long enough to form any kind of opinion about them?

A: I mean, that one time when we was in the pool hall.

Q: But how long was that? How long were ya'll around each other?

A: I'd say four or five hours, just talking.

R.p. 497, ll. 4-10.

At the close of the State's case, Johnson made a motion for a directed verdict. R.p. 503. The defense did not offer any evidence. R.p. 510.

During its closing argument, the State argued that Johnson was "just as guilty as each and every one of those other men:"

He didn't go in the house. He didn't pull the trigger, but it was his plan. It was his idea. It was his will that made it happen. Just as if he'd gone into that house, he's guilty of Burglary 1st. He's guilty of the murder of M.M.

R.p.p. 512, l. 23- 513, l. 3.

Defense counsel, in his closing argument, repeatedly emphasized that Larry and Washington repeatedly lied about their involvement in this case. R.p.p. 531- 39.

The jury deliberated for approximately an hour and a half and then rendered its guilty verdicts on both charges. R.p. 568. The judge imposed a thirty-year sentence. R.p. 582.

ARGUMENT

I. The trial court judge erred by denying appellant's motion for a directed verdict because evidence presented at trial was insufficient to support appellant's convictions for murder and burglary.

The trial court judge erred when he denied Johnson's motion for a directed verdict because the evidence presented at trial was insufficient to support his convictions for murder and burglary. When considering a motion for a directed verdict, the trial court is concerned only with the existence of evidence, and not its weight. *State v. Stuckey*, 347 S.C. 484, 498, 556 S.E.2d 403, 410 (Ct. App. 2001). Grant of a defense motion for directed verdict of acquittal is proper "if there is a failure of competent evidence tending to prove the charge." Rule 19(a), SCRCrim P; *State v. Jenkins*, 278 S.C. 219, 222, 294 S.E.2d 44, 46 (1982). A trial court must submit the case to the jury if any direct or substantial circumstantial evidence has been presented that reasonably tends to prove the defendant's guilt or from which his guilt may be fairly and logically deduced. *State v. Fennell*, 340 S.C. 266, 270, 531 S.E.2d 512, 514 (2000). A trial court should grant a directed verdict motion when the evidence presented merely raises a suspicion of guilt. *State v. Cherry*, 361 S.C. 588, 594, 606

S.E.2d 475, 478 (2004). Suspicion implies a belief or opinion as to guilt based upon facts or circumstances not amounting to proof, but the trial court is not required to find the evidence infers guilt to the exclusion of any other reasonable hypothesis. *Id.* Conviction based on insufficient proof of guilt offends the federal Constitution. *Jackson v. Virginia*, 443 U.S. 307 (1979).

The trial court judge erred when he allowed the self-serving and inconsistent testimony of Patrick Larry and Justin Washington to be the sole basis for allowing the jury to find Johnson guilty. Their testimony was highly unreliable, and admittedly they lied repeatedly to law enforcement about their involvement in the case. Law enforcement even acknowledged that there was no forensic evidence—or any other evidence at all—connecting Johnson to these events other than Larry and Washington’s testimonies. Additionally, their testimony is suspect because they both received extraordinarily lenient sentences in light of their participations in M.M.’s murder. Larry, for example, will only serve seven years in prison for his deeds. The trigger-man, Washington, has a shorter sentence than Johnson. Under the unique facts of this case, the trial court judge erred by allowing this case to be submitted to the jury, and Johnson respectfully asks this Court to direct a verdict of acquittal.

II. The trial court erred by allowing the State to introduce its ballistics evidence through the testimony of Lexington County officers when that testimony was rank hearsay and violated appellant’s right to confront the witnesses against him.

During the trial, the following exchange occurred:

Q: Upon seizing the firearm, did you attempt to do or send off for any testing of the shell located at the scene and the firearm?

A: Yes, we sent the shotgun and the shell seized at the scene to Richland County Firearm's Examination Unit. And we were advised that the shotgun shell and the firearm came back as a match, that the shell seized at the scene was fired from the shotgun that was turned over to us from Mr. Washington.

Q: According to those results, was there any doubt that's the same shotgun, that shell that was recovered for a match to that shotgun?

A: Yes. No, there were no doubt that that shotgun fired the shell that was located at 498 Calhoun Road the incident location and the murder of [M.M.].

R.p. 329, ll. 1-15.

Collins further testified that based on this match, they secured arrest warrants for Johnson and Washington. R.p. 329, ll. 16-19.

This testimony was highly improper because it was rank hearsay, and its admission violated Johnson's rights under the Confrontation Clause.² Hearsay is an out of court statement, offered in court to prove the truth of the matter asserted. *State v. Williams*, 285 S.C. 544, 331 S.E.2d 354 (Ct. App. 1985). Hearsay is inadmissible as evidence unless an exception applies. *Id.* See also SCRE, Rule 801 and 802.

The Sixth Amendment's Confrontation Clause guarantees that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him. U.S. Constitution, Amend. VI. In *Crawford v. Washington*, the United States

² If this Court does not deem the issue properly preserved, Johnson may have to raise this claim in an application for post-conviction relief.

Supreme Court held the admission of testimonial hearsay against an accused violates the Confrontation Clause if (1) the declarant is unavailable to testify at trial and (2) the accused has had no prior opportunity to cross-examine the declarant, 541 U.S. 36, 59 (2004).

Here, the testimony was inadmissible as rank hearsay, and it further violated Johnson's rights under the Confrontation Clause. See also *Bullcoming v. New Mexico*, 131 S.Ct. 2705 (2011) (The Confrontation Clause did not permit the prosecution to introduce testimonial statements of a non-testifying forensic analyst through the in-court testimony of a supervisor or other person who did not perform or observe the laboratory analysis described in the statement).

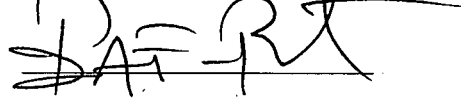
The admission of this improper evidence was highly prejudicial given the importance of this evidence to the case. Had the shotgun not been a match, it would cast further doubt of the testimonies of Larry and Washington which were already highly problematic. Indeed, it was this "match" that constituted the basis for law enforcement's obtaining the arrest warrants for Johnson.

Respectfully, Johnson asks this Court to reverse his convictions and remand his case for a new trial.

CONCLUSION

With respect to Issue I, Johnson respectfully asks this Court to direct a verdict of acquittal. With respect to Issue II, Johnson respectfully asks this Court to reverse his convictions and remand his case for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'EAF-RB', with a horizontal line drawn through the middle of the signature.

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