THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

R. Lawton McIntosh, Judge

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SC Court of Appeals

Appellate Case No.: 2017-002011

State of South Carolina, Respondent,

v.

Jason Franklin Carver, Appellant.

INITIAL BRIEF OF THE APPELLANT

May 3, 2019

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STATEMENT OF THE CASE

On March 28, 2016, Appellant Jason Carver (hereinafter referred as "Appellant") worked a full day at the Greenville Transmission shop, for which he has toiled since 1999. Around 6:00 in the afternoon, he arrived at James Milton Gambrell's (hereinafter referred as Gambrell) house, where he worked on cars to supplement his income. That night, he was supposed to finish a transmission that he had been working on during the course of the preceding weekend.

At some point in the afternoon, deceased Stephen Cameron (hereinafter referred as "Cameron") came to Gambrell's house to sell his dirt bike to Gambrell's nephew, Quay. He was able to get a bill of sale created and executed the sale. Cameron stayed at the house for some considerable time to teach Quay how to ride the dirt bike. As a result of the sale, Cameron was left without a ride home. Upon learning that Cameron had no ride, and recognizing he was drunk, Gambrell asked Appellant to give Cameron a ride home. Appellant complied and drove Cameron to his home.

While Appellant was taking Cameron home, Gambrell and Woodrow Curry (hereinafter referred as "Curry") discovered that an item was missing from Gambrell's room; and, believed Cameron had taken it prior to leaving.

Appellant and Cameron arrived at the latter's home at approximately 9:02. Appellant, nor Cameron, had a cellphone. So, Gambrell had no way of communicating with them regarding the alleged theft. Thus, Appellant simply dropped Cameron off and set off to return to Gambrell's home.

Upon returning to Gambrell's home, the latter told him that he needed him to return to Cameron's home and drive him back to the house. Curry jumped in the car with Appellant as the latter prepared to go back to Cameron's house. As far as Appellant was concerned, he was to bring Cameron back to Gambrell's house, as instructed. Appellant left Mr. Gambrell's home without knowledge of the theft. The only thing he knew about Cameron at that point was the latter's transaction regarding the dirt bike.

When Curry got in the car, a hand gun fell from his pocket. Appellant was shocked to see the gun. He had no idea why a gun would be necessary. In an effort to downplay the need for a guy, he told Curry that there would be no need for a gun with two of them there. Curry left the gun on the floorboard of the car.

Upon arrival at Cameron's house, Curry knocked on the door. When no one answered, Curry and Appellant headed back to the car. Curry, however, noticed Cameron peeking out the window. Curry turned back and started to the porch. As he ascended the stairs, and approached the door, Cameron came out of the house in an aggressive manner. Curry announced that he and Gambrell had learned that Cameron had taken an ounce of cocaine from Gambrell's home. Cameron immediately denied taking such an action. Curry continued to accuse Cameron of

theft; and, requested that he return it or pay for it. At that point, Cameron pushed Curry. He pushed him with such force that he nearly knocked Curry off of the porch. Out of nowhere, – Curry drew out a gun, which was unknown to the Appellant, and pointed the same toward Cameron. Upon seeing the incident, Appellant immediately began pleading with Curry to put the gun away. Cameron, showing no fear of the gun, slapped the gun out of his face and said incredulously, "what are you going to do, shoot me?" (James Milton Gambrell Trial Tr. p. 52, 8.20, Sept. 5, 2018). As Curry brought the gun back up, he shot Cameron.

Appellant, recognizing that his attempts to dissuade Curry fell on deaf ears, decided he would not be part of the argument and started towards the car, intending to leave Curry behind. Shocked and fearful for his life, Appellant attempted to put the key into the ignition, but in his state of panic, dropped the keys to the floorboard. By the time he collected the keys, Curry had gotten in the car; brandished the gun towards Appellant; and, demanded he drive the car out of the neighborhood with the lights off. Appellant complied. On the drive to Gambrell's home, Curry warned Appellant he would kill him and his mother, if Appellant told anyone of the incident.

When they got back to Gambrell's house, Appellant began crying. Curry, on the other hand, casually remarked, "Shit got out of hand." His apathetic view towards Cameron's life struck a nerve in Gambrell; and, they began to argue vociferously. Appellant took this opportunity to show himself out. He went directly to his mother's home. Minutes later, he witnessed Curry drove by in his green Grand Am. (Jason Carver Trial Tr., p. 546, 12.25 & p. 547, 1.9, Aug. 21-25, 2017).

Appellant took Curry's threats to heart. He knew he had just seen Curry shoot Cameron. He knew he had just seen Curry drive by his mother's home. Given Curry's violent tendencies,

Appellant did not wish to give him reason to believe he told on him. So, when Detective Marzolf and Detective Call initially questioned him at his workplace, he did not disclose the shooting. (Carv. Trial Tr., p. 550-52, 18.6).

On Thursday April 11, 2016, an opportunity presented itself to tell the police what had happened. Law enforcement executed a search warrant of Gambrell's home on Appaloosa. They found Curry, but not Gambrell, who was absent from his home. Curry took ownership of the cocaine that was found located. Based on the weight found, Curry was charged with trafficking cocaine. With Curry safely behind bars, Appellant immediately sought to do the right thing.

On that Monday morning, Appellant sought the advice of his employer, Mr. Timothy Jacobs (hereinafter referred as "Jacobs"), who suggested he share the incident to his mother, and, go directly to the police. Thereafter, Appellant decided to go to the police without an attorney because he knew that he had nothing to hide. Appellant convinced Gambrell to talk with the police about what they knew of the incident that transpired on March 28, 2016. (Carv. Trial Tr. p. 552, 19.24). Appellant only learned of the stolen item during their drive to the sheriff's office, when Gambrell told him about it. (Carv. Trial Tr., p. 565, 17.24). Confident Curry would not be able to hurt his mother, Appellant went to the police, intending to assist them with details of the shooting incident. Instead, he was arrested and charged with murder.

At the trial, the State and the defense differed over the events that led to Cameron's killing. According to the State, Appellant was connected to a drug trade, and that Curry and Appellant worked for Gambrell. The State's theory was that Gambrell, Curry and the Appellant planned to collect on a drug debt, rob or kidnap Cameron. In support of its theory the State

presented eleven (11) investigating officers, who seemed to have not been coordinating with one another; and Curry, the self-confessed shooter.

Detective Kreig Marzolf (hereinafter referred as "Marzolf"), the lead investigator in the case, testified to the following: (1) there were two (guns), a .25 and a .38 caliber revolver involved in this case (Carv. Trial Tr., p. 340, 8.23); (2) the .25 was not recovered, but the .38 caliber revolver was found at Appaloosa (Carv. Trial Tr., p. 347-48, 20.1); (3) the residence where Buick was found was owned by Gambrell's friend (Carv. Trial Tr., p. 314, 11.15); (4) Appellant was not provided any gun (Carv. Trial Tr., p. 345, 3.14); (5) Appellant's fingerprints did not match the one found on the .38 caliber (Carv. Trial Tr., p. 348, 2.9); (6) Appellant came to the ACSO voluntarily (Carv. Trial Tr., p. 312, 4.9); (7) there had been people who had come and gone from Cameron's house, (Carv. Trial Tr., p. 319, 16.23; p. 328, 3.6); (8) Angie's friend came to the deceased's house and rolled his body (Carv. Trial Tr., p. 319, 8.11); (9) Daniel White accompanied Detective Henry to the residence where the Buick was found (Carv. Trial Tr. p. 323, 6.8); (10) Daniel White gave a statement that Christopher's girlfriend, Angela, planned on robbing Cameron (Carv. Trial Tr., p. 326-27, 23.3); (11) ACSO reviewed two videos but he did not review all the videos taken during the night of the shooting (Carv. Trial Tr., p. 328, 7.12); (12) he could not say that Appellant was part of any drug enterprise (Carv. Trial Tr., p. 339, 2.6); (13) Appellant was not in Gambrell's residence when cocaine was taken (Carv. Trial Tr., p. 344-45, 23.1); (14) Curry expressed to Appellant and Mrs. Curry that if they told anyone about anything, he would kill them (Carv. Trial Tr. p. 350-51, 18.1); and, (15) Appellant was a witness to Curry shooting Cameron (Carv. Trial Tr., p. 351, 2.5).

The State also presented Curry as a state witness. The State provided Curry with the opportunity to plead to voluntary manslaughter as opposed to murder. Curry testified among

other things, that: (1) he worked for Gambrell for three (3) years (Carv. Trial Tr., p. 389, 5.7); (2) Appellant took Cameron home and was gone for twenty or thirty minutes (Carv. Trial Tr. p. 389, 14.16); (3) Gambrell discovered that cocaine was missing and told Curry about it (Carv. Trial Tr., p. 389, 21.25; p. 390, 4.12); (4) Gambrell gave him a gun (Carv. Trial Tr., p. 390, 13.15); (5) he had a .25 caliber gun in his waistband (Carver Trial transcript, p. 382-83, 22.13); (6) the minute Appellant pulled in the driveway, Gambrell and Curry told him that he needed to go back and get Cameron (Carv. Trial Tr. p. 391, 21.24); (7) Appellant had a shiny gun that had a long barrel (Carv. Trial Tr. p. 392, 22.25); (8) there was no plan to kill anybody (Carv. Trial Tr. p. 393, 20.25); (9) he left the .38 caliber in the car (Carver Trial Tr., p. 393, 1.5); (10) he talked to Cameron and relayed that Gambrel wanted his drugs back or pay for it (Carver Trial Tr. p. 394, 8.12); (11) Cameron started pushing him and as a result he pulled his unknown gun and shot Cameron (Carv. Trial Tr., p. 394, 22.4); (12) he was charged with murder but pled guilty to voluntary manslaughter (Carv. Trial Tr., p. 372, 4.5); and, (13) despite his many charges before, this was the first time his sentence was deferred (Carv. Trial Tr., p. 376). The State did not introduce into evidence the gun which Appellant allegedly used.

The prosecution also presented a surveillance video, taken from one of the deceased's neighbors, showing the traffic onto Cameron's property. It showed the first time Appellant drove Cameron to his house. Sometime after, it showed the white Buick, that Appellant drove the second time he went to Cameron's house, as instructed by Gambrell. The surveillance video had a two-hour time gap.

For his part, Since Curry threatened Appellant and his mother's life, Appellant intended to establish Curry's propensity for violent behavior. Appellant called Sheila Curry, the wife of

Curry, who admitted that her husband threatened to kill her and her son, if they were to discuss what had happened. (Carv. Trial Tr., p. 456, 13.17).

Appellant also presented his employer, Timothy Jacobs, who testified that he has known Appellant since 1999. Appellant worked at Greenville Transmission Clinic, which Jacobs owns. (Carv. Trial Tr., p. 462-63, 20.15). He vouched for Appellant's reliable, loving, hardworking and family-oriented personality. (Carv. Trial Tr., p. 463-465, 16.2).

Gambrell was also called as defense witness. The court refused to allow Gambrell to testify. The judge failed to provide any reason for same. He did allow Appellant to examine him outside the presence of the jury. The court indicated to Gambrell that he was strongly opposed to him testifying. Gambrell had his counsel present. Appellant merely sought to establish he was not at Gambrell's home long enough to learn of the alleged theft.

However, the court would have not any part of him testifying. The court stopped Gambrell from testifying, despite the fact his learned counsel was there to offer him advice. The court mandated that Gambrell leave the courtroom with his attorney and exercise his right to remain silent. (Carv. Trial Tr., p. 483-487, 1.12).

Appellant believed that Gambrell, who would have testified as to his exact instructions to Appellant, would have exonerated the latter from the murder charge. Since Gambrell could no longer stand in court, Appellant attempted to introduce the audio recording of Gambrell's police interrogation. The court initially denied Appellant's request, deciding that it did not meet the standards as set forth in State v. Doctor, 413 S.E.2nd 36, and would not exculpate Appellant. (Carv. Trial Tr., p. 501, 5.16).

Appellant also subpoenaed Quay Gambrell to testify on the sale of the dirt bike. When the witness failed to attend the hearing, the Court refused to extend or continue the trial, ruling

that the witnesses' testimonies were immaterial to the guilt of Appellant. (Carv. Trial Tr., p. 592:7-25 & p. 593:1-16).

At the close of evidence, the judge charged the jury. The jury's instructions included discussion of murder and the accomplice liability theory. Following the deliberations, Appellant was convicted of murder on August 25, 2017. He moved to vacate or arrest the verdict; or, in the alternative grant a new trial, but was denied in an Order, dated September 14, 2017.

Appellant perfected his appeal. (Appellant's Notice of Appeal, Sept. 25, 2017). He was finalizing the record on appeal when he learned of the trial for Gambrell. Gambrell was charged with "Accessory before the fact to a Felony" and "Solicitation to Commit Murder". Detective Marzolf and Curry were made State witness against him. These two witnesses offered statements that were either not introduced or ran inconsistent with their previous testimonies in Appellant's case. Appellant believed that these statements should be explored in depth as they go to the very core of the crime for which Appellant was convicted and sentenced to thirty (30) years of imprisonment.

Appellant moved to hold his appeal in abeyance based on newly discovered evidence on October 19, 2018, which this Court granted on December 10, 2018.

In the trial court, Appellant filed his Motion for New Trial on December 20, 2018. He amended the same on December 27, 2018, which was summarily denied on January 4, 2019. Appellant moved to reconsider the said Order on January 14, 2019 and submitted an Addendum to it on January 17, 2019. The trial judge denied the motion on January 30. 2019.

On February 7, 2019, Appellant filed his Notice of Appeal and moved to consolidate the two (2) appeals. This Court granted the Motion to Consolidate on April 4, 2019.

STANDARD OF REVIEW

In criminal cases, an appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006).

ARGUMENTS

I. THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR NEW TRIAL

A. Newly Discovered Evidence surfaced that warrants the examination of this case.

The trial of James Milton Gambrell in the murder case of Steven Cameron, ushered new evidence that was not available during Appellant's trial. The newly discovered evidence consists of Affidavits of Curry and Gambrell, as well as statements by witnesses in Gambrell's trial. Appellant could not have obtained this evidence during his trial since they were either intentionally omitted or were fabricated.

From the inception of this case, the State relied heavily on Curry's testimonies, which have been proven to be inconsistent and unreliable in many instances.

First, during the trial for Appellant's case, Curry denied having named anyone as the shooter, insisting that it was him who shot Cameron.

Q. When you originally spoke to detectives who did you say shot Steven Cameron?
A. I didn't.
Q. You didn't?
A. (Negative gesture).
Q. So you're telling us today who shot Steven Cameron?
A. Yes, ma'am. It just happened, I didn't mean to shoot him. He was just coming at me. I don't even remember pulling the trigger, it just went—(pause)—I wish I could turn back time, but I can't.
Q. Thank you, Mr. Curry. Please answer

any questions that Mr. Smith may have for you.

(Carv. Trial Tr., p. 373-74, 14.4)

However, in the Gambrell trial, Appellant learned that Curry, initially tried to pin the shooting on Appellant. Marzolf, who interviewed Curry, testified to the following:

Q. Now, did Mr. Curry, the shooter, admit to you what had happened, or did he deny all knowledge of what had happened?
A. He gave me a version of what had happened in which he said that they did go to the house and that Jason Carver was the shooter that night.
Q. But didn't Mr. Curry later change his mind and admit that, in fact, he was the shooter?
A. Yes, sir, he did.
Q. But at the time he was lying about that to you, correct?
A. Yes, sir.

(James Milton Gambrell Trial Transcript., p. 40-41, 16.2).

Second, when Curry was asked what he did after leaving Cameron's house during Car's trial, Curry stated in a straightforward manner that they went back to Gambrell's house.

Q. What did you and Jason Carver do when you left Steven Cameron's house?
A. Went back to Milt's.

(Carv. Trial Tr., p. 371, 3.5).

However, when the same question was asked at the Gambrell trial, Curry revealed, for the first time, that he called Gambrell on the way back to his house and told him of Cameron's shooting.

Q. Okay. Did you do anything on the way to Mr. Gambrell's house?
A. Yes, ma'am. I called him there and told him that he better be sure that Steven got that dope. I mean, I just shot him.
Q. You called Milt and told him that?

15. A. Yes, ma'am.

(Gamb. Trial Tr., p. 53, 9.15).

Out of nowhere, the prosecutor asked Curry if he did anything on the way to Gambrell's home. This response was not elicited during Appellant's trial. It is very clear from the direct examination that the solicitor brought out Curry's alleged call to Gambrell to paint the picture of the consigliere calling the mob boss after he had done a dirty deed on his behalf.

Gambrell contradicted Curry's claims. In his sworn affidavit, Gambrell categorically denied that Curry called him since Curry had no phone at the time. (Sworn Affidavit of James Milton Gambrell, November 30, 2018). Th State did not offer Gambrell or Curry's respective phone records from the night of the incident to support Curry's statements. It is the Appellant's belief that there has never been such proof, given the fact that Curry did not have a phone.

Third, at Appellant's trial, Curry testified that Gambrell instructed Appellant to drive Cameron to his house.

21. Q. What were y'all doing?
22. A. Well, at the time—at the time I
23. was working on a car. I was working on a car
24. and I guess he was in there with them. Then
25. Milton came out there and told Jason to take
01. Steven home.

(Carv. Trial Tr., p. 363-64, 21.1).

In his subsequent testimony at Gambrell's trial, Curry implied that Appellant voluntarily took Cameron home.

16. Q. What we're y'all doing?
17. A. Well, I mean like I say, I was out there
18. working – to begin with, I was out there working on a
19. car. Carver wasn't even there yet. I was working on a
20. car there, and they was in the house. Steven had come
21. over with a dirt bike, and he was in the house.
22. And then later on, when Carver got off work, he

come over there like he normally did. He went in the house and come back out, him and Steven there, and he took Steven home.

(Gamb. Trial Tr., Cross Exam of Curry, p. 48, 16.25).

Fourth, Curry, implicated Appellant by testifying that he had a gun when they went to Cameron's house, only to deny the same in his subsequent testimony.

Q. Did you have a gun when you left Appaloosa Drive?
A. Yes.
Q. Where did you get that gun?
A. Milton Gambrell.
Q. Did Jason Carver have a gun when you left Appaloosa Drive?
A. Yes.
Q. Where did he get that gun?
A. It was his.
Q. Did you have more than one gun with with you?
A. Yes.
Q. How many guns did you have?
A. Two.
Q. Do you remember what kind of guns they were?
A. .38 and a .22--.25, I mean.

(Carv. Trial Tr., p. 366-67, 15.7).

However, in the same examination, Curry stated:

Q. And the weapon that you said that you had seen, was that the same weapon that you allege that he had at this time?
A. I don't know that he owned one.
Q. The one with the sight on it, the one that he allegedly brought out and showed you previous to his incident, you still don't know what that is?
A. No, sir.

(Carv. Trial Tr., p. 368, 2.10).

Gambrell confirmed that Appellant did not have a gun on March 28 or 29, 2016. (Affidavit of James Milton Gambrell, November 30, 2018). Gambrell stated that the only time he saw Appellant with a gun was in 2015, one year prior to the shooting incident. At that time, Appellant was showing his brother's gun to Gambrell. *Id.*

Fifth, in recalling what transpired between him and Cameron, Curry testified that he only realized that he had a gun with him when Cameron came charging at him and that he had no choice but to shoot the latter.

Q. So you had a chat with Steven Cameron. And after he did not give you any money and he did not give you any drugs, what did you do?
A. I don't know, I like turned and he come at me, and I looked down, I didn't know I had the gun but obviously I did—I had it, I mean. Then like, 'oh.' He charged at me and – I don't even remember pulling the trigger but I heard *Pop! Pop!* So—(pause).
Q. So you shot Steven Cameron?
A. Yeah, I guess.

(Carv, Trial Tr., p. 369, 14.25).

In his testimony at Gambrell's trial, Curry testified that he pulled the gun to intimidate Cameron, who charged at him at that point. He pulled the gun prior to any exchange of words between him and Cameron.

Q. Why did you do it?
A. Because for some reason or another I had done pulled the gun, I guess to intimidate him or whatever, and he charged at me. "What are you going to do, shoot me?" And he charged at me. I don't know what to do. What's he going to do, take the gun and shoot me or what? I don't know. I mean, that's just—
Q. Why did you feel the need to try to intimidate him?
A. He's bigger than I am.
Q. He's bigger than you are?

A. A lot bigger than I was.
Q. But you just said you were just going to have a conversation with him. Why should him being bigger than you make a difference if you're just going to have a conversation?
A. Man, like I said, I was high. I was 150 pounds. I was all drawed up myself, you know I mean.

(Gamb. Trial Tr., p. 63, 8.25).

Appellant believes that the purpose of Curry's new testimony was to eliminate any self-defense argument. By saying that he had already pulled the gun, it sounded as if he was a bank robber, who goes into the bank with gun drawn ordering everyone on the ground and announcing, "This is a stick up".

Ironically, that exchange also illustrated the fabrication of Appellant having a gun. By having Curry testify that Appellant had a gun, the State made it appear that Appellant was "part of the team". The only statement regarding Appellant possessing a gun was from Curry. Appellant painstakingly discussed how he pleaded with Curry to leave the .38 (the only gun that Appellant knew Curry had) in the car. Obviously, Appellant did not have a gun; or, he would not have been so aggressive with his plea for Curry to leave his gun in the car. More importantly, if Curry's testimony were to be believed then Curry would not have felt threatened when Cameron lunged at him during their exchange of words. It was irrational that Appellant, having a gun with him, did not use the same against Cameron, whether it was just to intimidate or to ensure that the latter complied with Curry 's demands. It would have shown unity in action and purpose. But that is not the case at hand. In the instant case, when Appellant realized that Curry would not heed his pleas to put the gun down, Appellant ran away from the two men, with the intention of leaving Curry behind, *because he could not protect the deceased or himself without a weapon.* That is not the action of a man in agreement with Curry's actions.

Sixth, in Gambrell's trial, Curry testified that upon returning to Gambrell's house from Cameron's place, Appellant went in to return the gun to Gambrell. Of course, this testimony conflicts with Curry's prior testimony that Appellant had his own gun.

16. Q. And what happened when you got back to Appaloosa
17. Drive?
18. A. When – Carver went in before me there, but we
19. went in there and trying to give Milt there the guns
20. there. And I mean, Carver had a – there, and I
21. turned around and left there. I told him I was going
22. home; I was done for the night
23. Q. Okay what did you do with the gun when you got
24. back to Mr. Gambrell's house?
25. A. I gave them back to Mr. Gambrell.

(Gamb. Trial Tr. p. 53, 16.25).

Curry slipped with the following statement, "*we went in there and trying to give Milt there the guns there. And, I mean, Appellant had a -- there, and I...*" (Id.). The .25 caliber was never seen prior to the shooting. Neither was it found following the shooting. On the other hand, the .38 was returned to Gambrell's house. In testifying that "*(W)e went in there to return the guns*", Curry tied Appellant in with him. Curry admitted returning only one gun to Gambrell. More importantly, he caught himself saying that Appellant returned the gun he allegedly had. If it were true that Appellant had his own gun, he would have no need to return his own gun to Gambrell. In addition, if he just came over to work on the transmission, he would have no need for it.

Whenever confronted with the inconsistencies in his testimonies, Curry conveniently pulled the memory lapse excuse.

14. Q. Why did you testify in your first trial that you
15. went back to Milt's house and that's when you told him
16. about the shooting when you're testifying in this trial
17. that you called him on the way on your cell phone?
18. Which is the truth?

A. I called him on the cell phone.
Q. Why is this the first time you're saying this?
A. First time I recall being asked.
Q. Weren't you asked in the first trial? And, specifically, I'm talking about your codefendant's trial, the other person who was with you, Jason Carver's trial.
A That's 11 months ago, sir. It's hard for me to remember that far back. But, I mean, I told him on the way, you know. When I got there, he smelled the gun. I mean...

(Gamb. Trial Tr., p. 58-59, 14.2).

Q. Okay. So the first trial, you testified that after the shooting, you drove back to Milt's house, Mr. Gambrell's, and then you told him inside of his house --
A. Uh-huh.
Q. -- that you shot the guy.
A. I don't recall that, but if you say I did, I did.
Q. Do you recall what you told him as to why you shot the poor man, why you shot Mr. Cameron?
A. He didn't ask.
Q. Didn't you say something like, "Well, things just went crazy and I shot him"?
A. No. Like I say, he didn't ask. I told him on the way back over there that he better have been sure that that guy took his dope there because I shot him.
Q. You said the way back over there?
A. On the way back over there, I called him. He answered the phone. I said, "You better be sure that the man took your dope, Steven took your dope, because I just shot him."
Q. Did you tell any of the detectives this, that you called him on the way back over there on your cell phone?
A. Sir, I was under the influence. I don't recall speaking there to y'all, to detectives. Are you talking about when I was first arrested?
Q. No, sir. When you were interviewed by the police, when you're sitting in Greenville County jail.
A. Like I said, when I was first arrested 31 months ago, I was still under the influence of methamphetamines at that time. I went through their drug and alcohol treatment program in Greenville County

Detention Center.
Q. So you're telling this jury –
A. The first time I spoke to a detective, I did not tell them nothing. I can tell you that much. The second time I spoke to them, I don't -- I don't recall what I told them. I mean, I was still, you know, as they told me in drug class, I was still high.
Q. My question to you, sir, is: Why are we hearing this story that you called Mr. Gambrell on your cell phone after the shooting before you got back to the house? Why are we hearing this the first time today?
A. It's the first time it's been asked.
Q. The detectives never asked you the details of what happened?
A. Not that I recall.

(Gamb. Trial Tr., p. 59-61, 17.13).

However, during his plea bargaining, prior to the trial, Curry stated that he was not under the influence and his lawyer said that he was competent to plea.

THE COURT: Are you under the influence of any medications, drugs, or alcohol today?
MR. CURRY: No, sir.
THE COURT: Counsel, are you satisfied that Mr. Curry's competent to plea?
MS. BYFORD: I am, Your Honor.

(Woodrow Curry's Plea-Bargaining Transcript, p. 5, 18.23).

Clearly, Curry's testimonies were inconsistent and unreliable. It was another illustration of Curry being led by the "sentencing" carrot" offered by the State. Even assuming that Curry's testimonies were to be believed, he still deliberately withheld information that was relevant to Appellant's case. The defense counsel in the Gambrell trial perfectly summed up the flexibility in Curry's testimony, with the following question:

Q. Okay. Well, if your memory was so messed up, why should this jury believe anything you have to say today about what happened over two years ago?

(Gamb. Trial Tr., p. 66, 2.4).

On September 6, 2018, Gambrell who, following the prosecution's theory, was the mastermind of the "hand of one is hand of all", was acquitted of accessory before the fact. He was found guilty of solicitation of a felony.

On ACSO and police officers

At Gambrell's trial, Detective Marzolf testified that during one of their neighbor canvasses, one of his detectives talked to a neighbor who heard about an argument between Cameron and unidentified person wherein the word "dirt bike" was mentioned.

20. Q. So when you mentioned that on the first video that
21. a neighbor had heard the argument and heard what went
22. on down that night, that just was not true, correct?
23. A. Actually, that was true. We had -- during the
24. neighborhood canvass, it's my understanding that one of
25. the detectives talked with a neighbor who overheard an
01. argument and the words "dirt bike" were mentioned
02. during the argument.
03. Q. Did they hear gunshots?
04. A. No one -- I don't recall. I don't recall if
05. somebody heard gunshots or not. I know that they
06. talked to several people in the neighborhood.

(Gamb.Trial Tr., p. 38-39, 20.6).

15. A All I know is what, you know, what the detective
16. that was told to canvass told me, which was that, you
17. know, somebody had overheard an argument involving the
18. words "dirt bike."
19. Q. But no gunshots?
20. A. I don't recall if they had heard gunshots or not,
21. sir. I don't want to tell you the wrong thing.

(Gamb. Trial Tr., p. 39, 15.21).

This neighbor was not mentioned in previous reports. Neither was it mentioned by any of the detectives who testified in the Appellant's trial. Appellant maintains that this should have been disclosed in the previous trial as this confirms what he previously asserted he believed

why he was being sent back to get Cameron. The sale of the dirt bike reasoning shows Appellant's lack of criminal intent.

This was not the first time that the officers investigating this case failed to be forthright with information at their disposal.

Appellant's counsel asked Marzolf twice regarding Cameron's violent tendencies, which the officer denied having knowledge. (Carv. Trial Tr., p. 321, 20.25). However, Marzolf had knowledge of Cameron's volatile behavior. He admitted that he had a supplemental report from Officer Scott Hill who interviewed a neighbor who recounted Cameron's violent behavior. (Ibid.). Marzolf himself interviewed Cameron's siblings, Erica and Christopher. Erica told him of Cameron's history of domestic violence against his wife. (Marzolf's Supplementary Report, April 13, 2016). Christopher stated that Cameron had punched him at one instance; and, jumped on his daughter and left bruises on her, on another. (Ibid.)

As discussed in the previous section, Marzolf has shown no qualms in offering conflicting testimonies/statements. He testified not having knowledge of, nor even participated in, Curry's plea-bargaining deal.

03.	Q.	Do you know when he changed his mind about that,
04.		decided to admit he was the shooter?
05.	A.	Sometime after he had been charged.
06.	Q.	Charged by you?
07.	A.	Yes, sir.
08.	Q.	With these crimes?
09.		And to your knowledge, was that part of a plea
10.		agreement with him?
11.	A.	I don't know what the actual -- I know he's agreed
12.		to testify.
13.	Q.	As a matter of fact, he's here today, isn't he
14.		ready to testify?

(Gambrell Trial Tr., p. 41, 3.14).

Curry contradicted Marzolf's statement. In his sworn affidavit, Curry specifically stated that Marzolf and Solicitor Moore suggested to reduce his charge to voluntary manslaughter, if he plead guilty and implicated Appellant. (Affidavit of Woodrow Walter Curry, November 5, 2018). Curry exposed that it was Marzolf and the prosecutor's idea to reduce his charge.

Appellant believes that had this information been provided to him prior to his trial, it would have helped him formulate his defense.

In State v. Caskey, the South Carolina Supreme Court established the criteria necessary to grant a new trial on newly discovered evidence. The Court explained: "[a] party requesting a new trial based on after-discovered evidence must show that the evidence: (1) is such as would probably change the result if a new trial was had; (2) has been discovered since the trial; (3) could not by the exercise of due diligence have been discovered before the trial; (4) is material to the issue of guilt or innocence; and, (5) is not merely cumulative or impeaching." State v. Caskey, 256 S.E.2d 737 (S.C. 1979), cited in Hayden v. State, 299 S.E.2d 854 (S.C. 1983).

Appellant avers that he has satisfied the aforementioned requirements for the motion for new trial. The crux of the State's case against Appellant is Curry's testimony. Now that Curry's lies, and misleading statements have come to light, these cast doubt as to his testimony.

The inconsistent statements by Curry and Marzolf, as well as statements from Gambrell about Appellant not having a gun on the day of the shooting are evidence that could not have been discovered by Appellant during his trial despite exercise of due diligence because they were intentionally omitted or withheld from him. Appellant believes that had the information been made available as to a neighbor overhearing a conversation about a "dirt bike", it would establish a doubt into the minds of the jury as to Appellant's intent in returning to Cameron's house. Had Curry not lied about the Appellant having a gun or about Gambrell's instructions,

then there is a probability that the jury would have considered Appellant's narrative of what transpired during the night of the shooting. Curry's ever-changing testimonies would have a negative effect on his credibility as a witness and would affect the jurors' judgment. The State knowingly put forth Curry's alternative testimonies to ensure two (2) convictions.

The aforementioned evidence was discovered by Appellant after his trial. Despite exercise of due diligence, counsel for defense could not and would not have discovered the lies and misrepresentations that Curry divulged during Gambrell's trial. The State's efforts to conceal important information deterred Appellant from preparing for a comprehensive defense. The newly-discovered evidence is not merely cumulative nor impeaching, as it goes to the very essence of the elements of the crime of murder for which Appellant was convicted.

Appellant asserts that due to this newly discovered evidence which are not available during his trial, he is entitled to remedy under Rule 29 SCRCrimP.

B. Appellant is entitled to a new trial or judgment against him vacated because he was deprived of fair trial.

Appellant further asserts that he is entitled to new trial and/or that the judgment against him vacated by reason of the State's misconduct in the handling of this case.

Appellant insists that the prosecution abused its discretion in filing different charges against him, Curry and Gambrell. The prosecution's theory was that the three conspired to rob or kidnap Cameron, and that under the "hand of one is hand of all" doctrine, all three of them were guilty of the killing of Cameron. However, the prosecutor charged Curry and Appellant with murder [1], and "the boss", Gambrell, with the lesser crimes of solicitation to commit a felony and accessory before the fact to a felony. The same prosecutor handled Appellant's and

[1] Curry admitted to shooting Cameron, but his original charge of murder was reduced to voluntary manslaughter after a plea bargaining.

Gambrell's trial. But while she was very emphatic and steadfast with her argument on the application of the accomplice liability doctrine on Appellant and Curry, she deliberately and cautiously omitted the same argument in her prosecution of Gambrell.

Appellant was tried by himself because there would be no way to separate him from the other two. Gambrell and Curry were the ones involved with the cocaine trade. This cannot be better exemplified than by the fact that when the law enforcers raided Gambrell's house and found enough cocaine to fetch a trafficking charge (following Mr. Cameron's death), Curry was the only person found there.

Appellant avers that in its zealousness to get a conviction for this case, the prosecution went beyond its bounds.

First, according to the prosecution's star witness, Curry met with the prosecution team, three times. Marzolf was in at least one of these meetings. The prosecution provided no recording, or failed to make one, of the time they visited Curry to speak to him on his manslaughter deal. Appellant's counsel received two video interviews, but the Solicitor withheld (or conveniently did not make) the third. Appellant was not shown the video, or any other evidence, of what exactly the prosecution offered Curry. Curry maintained that Marzolf and Ms. Moore would reduce his charges to voluntary manslaughter, if he plead guilty and testified against Appellant. (Affidavit of Woodrow Curry, November 5, 2018).

Second, the State deferred Curry's sentencing for over a year, when the Order specifically stated that it would only be until after Appellant's trial. (Curry Plea-Bargaining Trial, p. 5, 2.6). However, the State liked the results of holding the anvil over Curry's head so much that they held off sentencing for another year; or, after Gambrell's trial. Curry testified as to what would convict Appellant, and then Gambrell. Curry's testimony as to calling Gambrell

on the way to the latter's house, a statement which Curry did not offer at Appellant's trial, is a testament to the extent by which they went to get a conviction.

Due to Curry's lies, Appellant and Gambrell were convicted of the charges brought against them. In this appeal, the State contends it merely has to show some evidence to defeat an appeal. However, considering Curry's testimony is the cornerstone of the State's evidence in both cases, and it was shown that he had offered conflicting statements, as well as withholding important information, Appellant asserts that the State has no evidence. Curry cannot be considered credible evidence when his testimony varies to fit the prosecutor's needs. Likewise, Curry and Marzolf withheld information that would be beneficial to the Appellant. Withholding information deprived Appellant his right to a fair trial.

During Appellant's trial, the prosecutor argued that all three were liable under the "hand of one is hand of all" doctrine.

> So what happened here is that Milton Gambrell, a known drug dealer, Mr. Smith just told you all about that, sent his two ""do boys"--- that is what Woodrow Curry called himself and Carver on the stand—they were his "do boys." He sent them in a car that he owned to collect on a drug debt. That is working together for an illegal purpose. That is the hand of one, hand of all.

(Carv. Trial Tr., p. 681, 4.12).

But in the Gambrell trial, this was all she stated:

> In order for James Milton Gambrell to be found guilty of accessory before the fact to murder, he must have the same criminal intent as Woodrow Curry. They must have intended the same thing before the murder was committed. They must have intended for Woodrow Curry to take the money, to take the drugs, or to bring Steven Cameron back to James Gambrell. But James Gambrell is also liable for any criminal act which, in

02. the ordinary course of things, was the natural or
03. probable consequence of the crime that he advised or
04. commanded. So was the murder of Steven Cameron a
05. natural and foreseeable consequence of James Gambrell's
06. order? I submit to you that it was.

(Gamb. Trial Tr., p. 10, 19.25 & p. 11, 1.6).

Clearly, the prosecutor applied a different standard at Gambrell's trial.

Third, Curry's sentencing was deferred for more than one year with no legitimate reason other than to ensure that his testimony would once again be beneficial to the State. This piece of information only came to light after the Gambrell trial, where Curry was called as a witness. The only logical conclusion was that the State dangled Curry's sentencing over his head for him to testify according to its wishes.

Fourth, in prosecuting the case, the State failed to disclose information and/or witness that may exculpate Appellant. A prosecutor's primary duty is to seek justice. Under the law, a prosecutor shall make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigate the offense. (Rule 3.8(d) of the Rules of Professional Conduct). It failed to do the same.

The investigation on Appellant's case was completed April or May 2016. The State offered Appellant a copy of the discovery response in December 2016, which Appellant was unable to open. By the State's own admission, what they provided had been faulty.

02. SOLICITOR MOORE: Yes, Judge. I cannot
03. guarantee that the flash drive will be able
04. to play for the jury. We have, as you know,
05. had some difficulty with that.

(Carv. Trial Tr., p. 274, 2.5).

Appellant repeatedly requested the discovery materials, which included surveillance video which ran in excess of 36 hours. These materials have been in the State's possession

since the first week of the investigation. Appellant was provided the materials a year after. Another set of materials which included an audio recording and three supplemental reports was provided by the State on August 9, 2017, or two (2) weeks prior to Appellant's trial. The State failed to give the defense the opportunity to review materials which it had for more than one (1) year. Even the Trial Court judge took notice of this.

THE COURT: I want to know what evidence that was delayed to August 9th, that kind of delayed delivery that y'all gave to the defense. This guy is on trial for murder and if he gets found guilty, then he's looking at life in prison.
SOLICITOR MOORE: I understand, Your Honor.
THE COURT: So playing with evidence is not satisfactory. I'm not saying that anyone is playing with the evidence but I want to know why after over a year it's just getting to the defense. That's inexcusable and I can't understand how, under any circumstances, that could be. Now, I might just be wrong --and it wouldn't be the first time. But I want an explanation and I want to know what else could be missing. We're not going through this trial, jerking and stopping here and there, because the State, either through its officers or through your office did not bother to give discovery. Okay? So I want to know why.
SOLICITOR MOORE: Your Honor, I can assure you that we gave Mr. Smith ---
THE COURT: I want to know why --I don't care what you did. I want to know why it just got sent out August 9th of this year.
SOLICITOR MOORE: Because I'd just received it, Your Honor.
THE COURT: From whom?
SOLICITOR MOORE: From Detective Henry.
THE COURT: Who is Detective Henry?
SOLICITOR MOORE: He is the man who was just testifying.
THE COURT: Why, sir, was it not until

the 9th of August of this year that you didn't give this information up?
OFFICER HENRY: What information?
THE COURT: Why did you wait until this year, over a year, to give this information to the Solicitor's Office?
OFFICER HENRY: I thought that I had given it to a supervisor at an earlier point in time.
THE COURT: You thought you had.
OFFICER HENRY: Yes, sir.
THE COURT: So it was a case of honest mistake?
OFFICER HENRY: Yes, sir. Seriously, yes, sir.
THE COURT: If it is a case of honest mistake, I can understand. But if it's a case of a recurring pattern—and the reason why I say that is because this is the second time that I've heard it in this case, in two days. Not from you. Okay. Is there other evidence that was not delivered until late in the game? If so, why?
SOLICITOR MOORE: Your Honor, if you will allow me to go through my discovery with Mr. Smith and look at my exhibit list, I can tell you exactly
THE COURT: I'll be right back. I want to get this cleared up.
SOLICITOR MOORE: Yes, sir.
THE COURT: Officer, if it is an honest mistake, it's okay. I'll be right back. Don't anybody leave until I get back.

(Carv. Trial Tr., p. 225-28, 17.11). Henry's testimony was suspect at best. If he did not know that the defense did not have the discovery, how would he suddenly have learned this fact immediately prior to trial?

The trial judge initially found this delay as unacceptable.

Q. Why is there such a delay in getting that information?
SOLICITOR MOORE: Your Honor, I can only

provide to Mr. Smith what I have for myself.
THE COURT: That is not an excuse.
SOLICITOR MOORE: I understand—
THE COURT: That is not acceptable.
SOLCITOR MOORE: I understand, Judge.
THE COURT: Then there is going to be
some consequences for the delay in getting
this information to him. The information is
going to be suppressed. There's going to be
some problems with it, I'm telling you.
SOLICITOR MOORE: I understand, Judge.

(Carv. Trial Tr., p. 224, 6.19).

The judge went easy on the State and allowed all the information in the record. (Carv. Trial Tr., p. 227,18.23). The Court changed gears and attacked Appellant's counsel for his failure to view the 36-hour long video; analyze the same; and, review the plethora of other materials submitted to him in the two (2) weeks leading up to trial. (Carv. Trial Tr., p. 228, 19.24). The Court failed to consider that Appellant's counsel is a sole proprietor, whom unlike the prosecution, did not have enough manpower and resources to devote to a comprehensive analysis of copious, delayed discovery materials. (Carv. Trial Tr. p. 229-30, 21.4). What is apparent is that the Court was lenient with law enforcement's haphazard handling of this case but applied strict standards with Appellant's counsel.

Failing to submit the video surveillance and required discovery materials within the reglementary period is tantamount to the State denying Appellant his right to due process. The delay in providing discovery materials to defense counsel seems to have become the norm. Considering that this was not the first instance it happened in this case alone, the trial judge should have addressed the issue more sternly. In State v. Fullwood, the Supreme Court ruled that the Defendant was entitled to a new trial on the ground that he was deprived of fair trial

because of withholding by Solicitor of information relevant to defendant's plea. State v. Fullwood, 262 S.E.2d 10, 274 S.C. 60 (1979).

Fifth, the State's questionable conduct continued during Gambrell's trial, when it deliberately offered Curry despite knowledge of his tendencies to lie and/or withhold information from the beginning. In fact, he was offered *because* of his willingness to change his testimony to bolster the State's respective cases.

Lastly, the State charged Appellant with murder. He was indicted for said crime. Nowhere in his charge sheet was he charged with kidnapping, robbery, attempted assault or drug distribution, and yet the State included the aforesaid felonies during the trial. At most, Appellant was denied his right to be informed of what he was charged.

Prosecutors have a unique role in society. They are the administrators and advocates of justice, as officers of the court. They have the sole responsibility of deciding who to charge, what to charge, what plea to offer, and what evidence to present to a jury at trial. Due to this vast power, there lies the inherent potential for abuse, which is not subject to review, except in the most unusual circumstance.

In this case, the State instituted the murder charge against Appellant, knowing it was possible that Curry could avoid same with a self-defense argument. Curry admitted to the shooting but offered the alibi of self-defense. The prosecutor offered Curry a plea deal. Curry's sentencing was deferred for no legitimate reason. In the meantime, he was tasked to testify against Appellant, whose only mistake is to do car jobs for Gambrell. While this goes into the matter of prosecutorial discretion, this was clearly abused in this case to the detriment of Appellant. The State knew that murder would not hold. Petitioner is presently serving a

sentence of thirty (30) years for a crime that he did not commit. Petitioner is serving a harsher penalty for a crime that Curry did commit.

Appellant submits that the prosecutors' obligation to convict should be balanced by the overriding goal of seeking justice. As it stands, the purpose and goal of liberal prosecutorial discretion, have been subverted. Appellant was extremely prejudiced in his defense of the murder charge, and in the interest of justice, this Court should reverse his conviction, or allow a re-trial for same.

II. THE TRIAL COURT ERRED IN CHARGING THE JURY THE "HAND OF ONE IS HAND OF ALL" DOCTRINE.

Appellant contends that the trial judge erred by instructing the jury the "hand of one is hand of all" doctrine. This doctrine, otherwise known as the accomplice liability, provides that: "one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to execution of common design and purpose." State v. Mattison, 388 S.C. at 479, 697 S.E.2d at 584.

Under the accomplice liability, "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." State v. Langley, 334 S.C. 643, 649-50, 515 S.E.2d. 98, 101 (quoting State v. Austin, 299 S.C. 456, 459, 485 S.E. 2d., 830, 832 (1989).

Appellant asserts that the evidence does not support the charge of accomplice liability. Firstly, the State admitted that Appellant did not shoot deceased Cameron. (Carv. Trial Tr., p. 683, 11.12). The State's own witness, Curry, confessed to shooting the deceased when Cameron charged at him during their heated exchanges. (Trial Tr., p. 369, 18.25).

Secondly, while Appellant was present at the scene, the State failed to establish that there was common design and purpose among Appellant, Curry and Gambrell to commit any criminal act.

The State failed to show unity in purpose.

Curry admitted that Gambrell spoke to him about the stolen item while Appellant was driving the deceased to his house. (Carv. Trial Tr., p. 389, 14.25). He also stated that Gambrell did not tell Appellant about any stolen item.

Q. So the minute that Mr. Carver pulls in that driveway, you and Mr. Gambrell tell him that he needs to go back and get him?
A. Yes, sir.
Q. You don't take the next twenty minutes telling him about the unbelievable Mr. Cameron taking his cocaine, do you?
A. No. No, he didn't.

(Carv. Trial Tr., p. 391-92, 21.3).

Nor was Appellant aware of the gun that Curry took from Gambrell.

Q. And he was not aware of that gun, was he?
A. Who?
Q. Mr. Carver?
A. Maybe not.

(Carv. Trial Tr., p. 393, 9.12).

Curry categorically stated that there was no plan to kill anybody.

Q. So Mr. Carver thought— 'I told him to leave it in the car, he left it in the car.' So going up to the door, you told the guy, 'Hey you have something of his' or 'do you have some money?' Does that sound about right?
A. Yeah. I mean, I don't – there— this wasn't – there wasn't no plan to kill nobody.
Q. Nobody had that plan, did they?

24. A. No, sir.

(Carv. Trial Tr. p. 393, 14.24).

This confession belied prosecution's theory that an agreement to carry out a plan transpired among the three. More importantly, the State's own witness affirmed what the Appellant had been telling all along: that he had no knowledge of any missing or stolen item at the time that he proceeded to Cameron's house with Curry.

Since Appellant was not in Gambrell's house when the latter learned of the theft; and, was not apprised of it when he returned to Gambrell's home, the only thing he knew was Cameron's transaction involving the dirt bike. As Curry testified, Gambrell instructed Appellant to go back to get Cameron the moment he pulled up in Gambrell's driveway. (Carv. Trial Tr. p. 391-92, 21.3). Thus, there was no common design, no prior agreement nor plan concocted among the three. Appellant could not have agreed to something of which he did not know. He could not have agreed to recover a stolen item from Cameron, if he had no knowledge of the item, nor it being stolen or missing.

There was no Unity in Intent.

In her closing argument, the Solicitor for the State averred that Appellant and Curry, by driving to Cameron's house, armed with guns and with intent to get drugs, money and/or to bring Cameron back to Gambrell's home, planned to commit, were committing, and/or committed robbery and/or kidnapping. (Carv. Trial Tr., p. 681, 4.25). That the State could not determine what underlying felony did Appellant and Curry planned to commit proved that the State failed to establish malicious intent. There was no underlying crime for which the hands of one, hands of all would apply. Based on Cameron's aggressive approach to Curry, Curry didn't even have

the opportunity to request that Cameron return to Gambrell's home. There was no kidnapping. There was no robbery (unless, Cameron's alleged theft is taken into account).

Curry confessed that Gambrell instructed him to get the stolen item, or the money.

Q. Why were y'all going to Sterling Bridge Road?
A. To go retrieve -- Milton had told us that Steven had stolen some drugs and that since Carver knew where his house was for us to go back over there and get either the dope or the money.

(Carv. Trial Tr., p. 366, 1.7).

It is clear by Curry's actions that he intended to carry-out such order.

Q. So you say that you spoke to Steven Cameron that night. What did you say to him again?
A. I told Milt Gambrell wanted his coke back, that he had stole the coke; that Milt wanted him to pay for it or he wanted his coke back.

(Carv. Trial Tr., p. 368, 16.22).

On the other hand, Appellant did not know about the stolen item. He was told to give Cameron a drive back to his house. His actions manifested his desire to comply with the instructions.

Q: Did Mr. Gambrel tell you, "go get that thief'?
A. No, sir, he just told me to go up there and pick him up, to bring him back, since I knew where I'd dropped him off at.

(Carv. Trial Tr., p. 556, 4.8).

Appellant was consistent in his cross examination:

Q. When you got back to Milton Gambrell's house, he sent you away again;

didn't he?
A. Yes, ma'am.
Q. He sent you away to get drugs, to get money, or bring Steven Cameron back: isn't that right?
A. He told me to go pick up Cameron and bring him back.
Q. So when did you know – you say in the video that you were supposed to down there, get the drugs, get the money or bring him back,
A. Gambrell did not tell me anything about picking up—
Q. When did you know that?
A. It was probably around about Sunday before we come down here to turn ourselves in, to tell them.

(Carv. Trial Tr., p. 563-64, 19.12).

Q. So you didn't know anything about any drugs?
A. No, sir.
Q. Even though---
A. No, ma'am.

(Carv. Trial Tr., p. 566, 13.17).

To reiterate here, Curry himself admitted that Appellant did not know about the missing drugs. (Carv. Trial Tr., p. 391, 21.25 & p. 392,1.3).

Appellant and Curry did not act with the same objective, as they clearly were given different orders.

Q. I completely agree that would be inappropriate. So, you planned to bring Steven Cameron back with you. Correct?
A. I was only asked to go up there and give him a ride back. That's all that was said. We weren't supposed to do no more.
Q. You were supposed to bring him back.
A. No, we were asked to go back up there and give him a ride back. If he wanted to come back, he would have come back. If not, then

we would have returned back without him.
Q. So if Steven Cameron had said 'no,
I'm not coming with you'—
A. I would have left.
Q. You would have just left?
A. Yes, ma'am. "

(Carv. Trial Tr., p. 576, 16.25 & p.577, 1.6).

If there was anything Curry was consistent of, it was that there was no plan to kill, rob, assault or kidnap Cameron. In his testimony during Gambrell's trial, Curry stated:

Q. Did you go over there with the intent to kill Mr. Cameron?
A. No, sir.
Q. Did anybody tell you to go kill him?
A. No, sir.
Q. Did anybody tell you to go beat him up?
A. No, sir.
Q. Did anybody tell you to go threaten that you were going to beat him up?
A. No, sir. I was just told to go get the dope or get paid for it.
Q. What does that mean --
A. I never intended to --
Q. What does that mean, you were told to steal the dope from him?
A. No. I was just told to go and retrieve it. He stole the dope.
Q. What if he refused? What if he said, "I'm not going to give it to you?" What were you going to do then?
A. Well, this is where this here seemed to blow out there. I mean, I didn't have intentions to do nothing.

(Gamb. Trial Tr., p. 62, 4.25).

Q. Well, isn't it true that what Mr. Gambrell wanted you to do was to relay the message that he knew Mr. Cameron had the drugs and that he should either pay for them or give the drugs back, correct?
A. I don't know what he was thinking.
Q. All right. But you are positive he did not tell you to go intimidate Mr. Cameron?
A. Right.

25. Q. He did not tell you to threaten Mr. Cameron in any
01. way?
02. A. No, sir.

(Trial Tr., p. 68, 17.25 & p. 69, 1.2).

This was confirmed by Marzolf, who was asked about his interview with Gambrell:

02. Q. He also emphasized to you that all he wanted was
03. for them to let Mr. Cameron know that he had the drugs,
04. they knew it, and to pay for it, right? Wasn't that
05. his story?
06. A Yes, sir.
07. Q. Okay. You -- also on that video, at one point I
08. believe I heard you say that Mr. Cameron -- dope was
09. found on Mr. Cameron after he was killed?
10. A. Yes, sir. During the autopsy, they did find some
11. drugs.
12. Q. Okay. Did you mean in his system?
13. A. No, sir. I mean they found actual drugs on his
14. person.
15. Q. Do you know how much?
16. A. I think in his tennis shoes, I believe. I don't
17. know the exact quantity, sir.
18. Q. Okay. So obviously --
19. A. It was significant, but I don't know exactly what
20 it was.
21. Q. Couldn't have put it there after he was killed, so
22. it was there in his shoes before he was killed,
23. obviously. You don't know how much?
24. A. I don't know exactly, sir.
25. Q. Okay. Did anybody -- were his shoes still on when
01. he was lying there on the porch?
02. A. Yes, sir, I believe so.
03. Q. All right. So nobody, obviously, tried to pull
04. his shoes off to look for anything, correct?
05. A. I would imagine not.

(Gamb. Trial Tr., p. 42, 2.25 & p. 43, 1.5).

Curry's foregoing testimonies belied the State's insistence on robbery and kidnapping as the underlying felonies that the three planned to commit. There was no robbery. Gambrell, Curry and Appellant did not intend to, nor did any of them take nor attempt to take property

belonging to Cameron. (S.C. Code Ann. § 16-11-330). It was Cameron who stole from Gambrell. Curry was tasked to recover stolen item or to collect payment for it, while Appellant was instructed to return Cameron to Gambrell's house. Upon examination of Cameron's body, drugs were found inside his shoes. That there were drugs found on Cameron's person showed that Curry and Appellant did not intend to take the stolen item by any means. This is particularly important considering that it has been established through testimonies and video surveillance that other individuals entered Cameron's house.

Gambrell, Curry and Appellant did not plan to kidnap or attempt to kidnap Cameron, because neither one unlawfully seized, confined, inveigled, decoyed, abducted or carried Cameron away, or attempted to commit said acts by any means whatsoever without authority of law. (S.C. Code Ann. § 16-3-910 (2012). If we were to believe Curry, as the prosecution so insisted, it was actually Cameron who initiated the aggressive behavior by advancing/lunging toward Curry. (Gamb. Trial Tr., p. 63).

Furthermore, Appellant was unarmed. If he really conspired with Curry to commit any crime, he would have provided himself with a weapon. But he did not. In fact, despite the State's insistence on Appellant bringing his gun to the crime scene, the prosecution did not introduce any gun in evidence. Neither did the State find Appellant's fingerprints on the .38 caliber gun.

The evidence at trial did not support the State's assertion that this was a case of drug distribution gone wrong. Even the State's witness did not admit to any drug transaction. At the very least, Curry testified to (a) Cameron stealing Gambrell's property, and (b) being ordered to recover the stolen item or give its equivalence in value.

What the evidence showed, through Appellant's testimony, which was corroborated by State's own witnesses, Curry and Detective Marzolf, was that Appellant was not privy to whatever

conversation that transpired between Gambrell and Curry. Gambrell's sole instruction to Appellant was to bring back Cameron to his house, and that Appellant had no prior knowledge of any missing or stolen item, nor of the gun that was in Curry's possession. Appellant's only participation in the events of March 28, 2016 was to drive Cameron to his house. He did not have the opportunity to return Cameron to Gambrell's home. Appellant's actions, under this circumstance were in no way a criminal felony. No malicious intent can be attributed to Appellant's driving. He didn't commit a crime when he took Cameron home. Why would he be guilty of murder for bringing him back?

There was no Unity in Action.

To determine if Appellant conspired or agreed with Curry's action, the focus of inquiry should necessarily be the overt acts of Appellant, before, during and after the shooting of Cameron. From this viewpoint, Appellant avers that there were several facts of substance which militate against the finding that he conspired or acted in unison with Curry.

First, there was no evidence of enmity or grudge between Appellant and Cameron.

Second, Appellant had no interaction with Cameron that can be remotely interpreted as coercion or grave threats, nor even kidnapping. Appellant drove Cameron to his house. The two had no verbal nor physical interaction, before nor during the shooting incident.

Third, Appellant had no prior knowledge of any missing nor stolen item, and he could not have known that Curry's purpose in tagging along was to get the stolen property or its monetary equivalent.

Fourth, no malicious intent can be attributed to Appellant's desire to follow what appeared to him was a harmless errand to get Cameron back to Gambrell's house. Gambrell's instruction, on its face, was not unlawful nor illegal.

Fifth, unlike Curry, Appellant was unarmed during this incident, negating intent to coerce, threaten, inflict physical harm, much less kill, the victim.

Sixth, the first time Appellant saw Curry with a gun, which had fallen on the car's floorboard, Appellant endeavored to prevent any untoward incident from happening by admonishing Curry to leave it in the car, which the latter did

Seventh, Appellant upon seeing Curry's second gun, pleaded with him to put the gun away.

Eighth, the shooting incident appeared to have arisen from a physical exchange between Curry and Cameron.

Ninth, Appellant attempted to drive and leave Curry behind, before the latter caught up with him and threatened him at gun point to drive him back to Gambrell's house.

Tenth, that Appellant driving Curry back to Gambrell's house was done under extreme duress. Curry, with a gun, threatened to kill Appellant and his mother.

And finally, Appellant voluntarily presented himself to the ACSO to recount his side of the story, when the threat to his and his mother's lives ceased with Curry's arrest.

Taken together, these acts by the Appellant do not meet the test of moral certainty in order to establish that he acted in unity with Curry in the commission of the crime of murder.

Appellant did not aid nor abet in Curry shooting Cameron.

The State argued that Appellant is liable for the crime of murder by assisting, aiding, and/or abetting its commission. It averred that he actively participated in the murder not only by "delivering Woodrow Curry to Steven Cameron's doorstep", but also by driving Curry back to Gambrell's house, even after witnessing the shooting incident. (Carv. Trial Tr., p. 683, 11.18). It argued that Appellant's acts proved complicity.

By prosecution witness' statement, Appellant's participation was limited to him driving the car. Appellant's driving was not necessary nor indispensable to the commission of the crime of murder. It was sufficiently explained that Appellant was the only one who knew where Cameron lived because he just dropped the latter off at his house a short time prior.

Appellant attempted to prevent Gambrell from any untoward action at every opportunity presented to him, but he was not willing to die fighting Curry that night. So Appellant drove Curry back to Gambrell under duress. The Court, however, seemed to set an unrealistic expectation for Carver. For him to prove his non-complicity of the shooting, it would seem that Appellant had to die.

The State also contended that Appellant manifested malicious intent by failing to call the 911 on a man that has been shot. It sought to use accomplice liability to provide a harsher penalty for an alleged omission already addressed by a separate statute. In asserting that Appellant's failure to report the shooting of Cameron as part of a concerted act of aiding or abetting in the crime of murder, the prosecutor asks this Court to blur a hard line recognized in South Carolina law that accomplice liability requires affirmative action and intent.

Under South Carolina law, any person who fails to prevent a felony from being committed, or to report of such is liable for the offense of misprision of felony. §17-25-30 S.C. Code Ann. Under this law, one who commits misprision of felony is liable as an accessory to the felony. Id. To expand the scope of accomplice liability by the aiding and abetting, to include the offense of misprision of felony, is to impose additional criminal penalty, and obscure the difference between a principal and accessory.

To the extent that the State alleged that Appellant's omission is an act that promotes the commission of a crime, then Appellant may not be convicted under accomplice liability.

As a general rule, the Appellate Court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Quattlebaum, 338 S.C. 441. The Appellate Court does not evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial judge's ruling is supported by any evidence. State v. Mattison, 352 S.C. 577. Appellant however challenges the integrity of the evidence submitted by the State. Appellant avers that since the State's evidence is a fabrication, it is not evidence.

III.

THE TRIAL COURT ERRED IN REFUSING TO DIRECT A VERDICT FOR THE APPELLANT ON THE CHARGE OF MURDER.

A defendant is entitled to a directed verdict when the State fails to produce evidence tending to prove every element of the offense charged. State v. Brannon, 388 S.C. 498. When reviewing the denial of a motion for a directed verdict, an appellate court must review the evidence and all inferences therefrom in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006).

Appellant avers that the evidence does not justify the verdict. To understand why the verdict is unjust as applied to the facts of this case, one must examine the purpose of felony murder. The crime of felony murder requires proof of premeditation and malice. It is inferred from the commission or attempt to commit certain specified felonies. Malice and premeditation are presumed if a death ensues during the commission or an attempt to commit arson, robbery, kidnapping, burglary, and the likes. In this case, the State is uncertain whether the underlying offense is drug distribution, coercion, kidnapping or attempted robbery.

The State contends that Gambrell, Curry and Appellant planned to commit the felony of murder or kidnapping simply because Curry was armed. Appellant had not figured in any discussion about Gambrell's guns. It had always been Curry who either took it from Gambrell

or received it from him. Before leaving Gambrell's house, Appellant had no knowledge of any stolen items, nor guns. Reference to Appellant were all speculations by the police.

Q. Mr. Carver did not have a gun, did he?
A. There were two guns and two---
Q. Mr. Carver did not have, did he?
A. They had guns. They were given a .38 by Mr. Gambrell and Mr. Curry carried a .25 automatic with him.
Q. Where was the .25 carried?
A. In a fanny pack, is my understanding.
Q. Who knew about the .25?
A. Mr. Curry knew about it and I know that his wife knew about it, she told me about it as well.
Q. So neither of those people are Mr. Gambrell or Mr. Carver, right?
A. No.

(Carv. Trial Tr., p. 340, 3.20).

Q. When Mr. Gambrell took that gun, Mr. Carver had not returned from Mr. Cameron's yet; had he?
A. Mr. Gambrell didn't take the gun, sir. Mr. Curry received the gun from Mr. Gambrell or took it from him.
Q. Mr. Curry took it from Mr. Gambrel?
A (No verbal response).

(Carv. Trial Tr. p. 341, 8.15).

Q. You also learned that the .38 nor any other guns were provided to Jason Carver; right?
A. The gun was provided to Curry and Carver when they were leaving, so I don't know.
Q. Which gun was provided to Mr. Curry?
A. The .38.
Q. Which gun was provided to Mr. Carver?
A. There were no other weapons

14. provided.
15. Q. And Mr. Gambrell told you that it
16. was not provided to him, meaning Mr. Curry
17. (sic); right?
18. A. He said that Mr. Curry took the weapon.

(Carv. Trial Tr., p. 345, 3.18).

Appellant submits that this Court take note of Curry's categorical denial of any agreement or intent to commit criminal acts against Cameron. Curry stated there was no plan nor instruction to intimidate, rob, hurt or kill Cameron. As Curry testified, he shot Cameron because the latter was aggressively advancing towards him.

Curry confessed to the following that: (1) Appellant had no knowledge of the stolen drug; (2) the gun was given to him (and him alone); (3) Appellant was not aware that Curry was carrying any weapon when they left Gambrell's house; (4) when Appellant saw Curry's gun, Appellant convinced the latter to leave the gun in the car; (5) Appellant was not aware that Curry was carrying another weapon; (6) he shot the deceased to defend himself; (7) he knew where Appellant's mother's lives; and, (8) Appellant did not take part in the shooting. As the prosecutor urged the jury, this Court should believe Curry's confession: he alone, killed Cameron.

On the other hand, there is no showing that Appellant had knowledge of the criminal intent of Curry. Appellant driving Curry to and from Gambrell's house was not in furtherance of Curry's aim to (1) get the money/drug, (2) forcibly bring Cameron to Gambrell's house; nor (3) to kill Cameron. Appellant's action was an act of self-preservation. Appellant had just witnessed Curry shot Cameron in cold blood. Curry still had the gun with him. To resist or go against Curry is an invitation to getting shot. Appellant's subsequent actions did not show consent, voluntariness nor willingness to help Curry. Appellant's actions, while may be

considered morally wrong, were normal reaction of someone who was fearful of his life and that of his mother.

Furthermore, it is well established that a trial judge should grant a directed verdict when the evidence merely raises a suspicion that accused is guilty. State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004); State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984). The evidence presented does not prove murder through accomplice liability. Based on Curry's testimony, he was the only one who shot Cameron; that the shooting was unplanned and that it was a knee jerk reaction to Cameron's aggressive conduct. The State failed to prove clearly and convincingly that Appellant intended to commit, or has committed a felony, nor that he acted in unity with Curry (and Gambrell). The State failed to prove, beyond reasonable doubt, that Appellant was guilty of murder.

IV

THE TRIAL COURT ERRED IN DENYING APPELLANT HIS DUE PROCESS RIGHTS.

The Court denied Appellant his right to be informed of the charges against him.

The Prosecution, in an attempt to bring this case into the realm of the "hand of one is hand of all", referenced the terms "kidnapping" and "robbery" during the trial. The Appellant was never charged with these two felonies. The underlying offenses were not presented to Carver, until the trial started. Defense Counsel objected to the use of such terms as facts not in evidence. The Court overruled the objection. (Trial Tr., p. 698, 10.22). Appellant believes that the Court, in allowing the State to argue using these terms that were not part of the charge, highly prejudiced Appellant. Despite a belated attempt to instruct the jury on its right to believe or not believe

statements made by the counsels on both sides, the Court had allowed the jury to make findings of facts that are not in evidence. Carver insists that his Due Process Rights were violated because he was not informed in advance, of the facts for which he was charged.

This is also relevant in that it shifted the burden of proof to Carver. Instead of the State having the burden of proving that Carver had a gun, that he shot Cameron, which was what was in the indictment, Carver had to prove that he did not commit a crime. Carver had to prove that (1) there was no plan to commit any of the underlying offenses; or (2) that if there was any agreement between Curry and Gambrell, that Carver had no knowledge of such; (3) he did not abet nor aid Curry in the commission of murder; and (4) he did not shoot Cameron. By charging the "hand of one is hand of all" theory, the State and this Court forced Carver to disprove that he did not have co-defendants, without being indicted for conspiracy

The State introduced the video surveillance, with a two-hour hour time gap. The video showed individuals, one of which is a woman, arriving at Gambrell's house hours after his death. The video confirmed that the crime scene was compromised. Appellant believed that this confirmed, or at the very least cast doubt, that there are other individuals who may have committed what the prosecution so conveniently accused the Appellant of committing.

The trial judge erred in refusing to let Gambrell take the witness stand.

Appellant raises his concerns on the judge's overzealous efforts to explain to Mr. Gambrell about his Fifth Amendment Rights, which he invoked, then waived, and invoked again after repeated warnings by the judge. As Supreme Court noted in Webb v. Texas, 409 .S. 95, 98 (1972)- a trial judge's efforts to protect a defense witness—in this case, from prosecution for perjury—may impermissibly intrude upon a defendant's right to produce evidence.

More importantly, Appellant questions the propriety of the Court's ruling on refusing to let Gambrell take the witness stand for pleading the Fifth, striking his entire testimony, and refusing to allow the Appellant to call him on the witness stand to plead the Fifth in front of the jury.

The witness' privilege against self-incrimination does not provide an absolute right to remain silent. It is well settled that a witness, who is not also a defendant, can invoke that privilege only after the incriminating question has been put. State v. McGuire, 272 S.C. 550-551. In short, unlike a defendant (or co-defendant) who is called to testify, a witness must invoke the privilege to specific questions, and may not assert "blanket privilege". Gambrell should have been allowed to take the stand and invoke the privilege in response to each question that could yield a self-incriminatory answer, but not to completely refuse to testify. The Court presiding over the proceeding in which a Fifth Amendment privilege is claimed has a duty to scrutinize a witness' invocation of the privilege.

In the case at bar, the trial judge invoked Gambrell's Fifth Amendment for him; and, prevented him from testifying in the witness stand, in contravention of the law.

Appellant was denied a meaningful defense when the Court refused his motion for continuance to present his witnesses.

Firstly, Appellant was denied his right to present Mr. Gambrell. Mr. Gambrell was key to the whole case, as he would testify that his instruction to Appellant was simply to bring back deceased Cameron to his (Gambrell) house. Gambrell was clearly describing the events that transpired on March 28, 2016, which confirmed Appellant's story. When he started to explain about the missing item, the Court advise him of his Fifth Amendment right to silence, which he

eventually invoked. At that point, the Court ruled that his statements to the Court will be stricken from the record.

Secondly, Appellant called two other witnesses, one of which was Quay, Gambrell's nephew, to testify regarding the transaction for the sale of dirt bike between him and Cameron. Appellant intended to probe the witness for the details of the transaction, specifically, whether a monetary value was involved. (Carv. Trial Tr., p. 592, 9.25 & p. 593, 1.15). Appellant avers that Quay's testimony is material in showing lack of malicious intent on the part of the Appellant when he returned to Cameron's house. The only transaction involving Cameron and Gambrell that Appellant knew of, was the sale of the bike. Appellant believes that Quay's testimony would negate the State's theory that this case was about drug distribution.

'The right to offer the testimony of witnesses and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts to the jury so it may be able to decide where the truth lies. Just as an accused has the right to confront the prosecution's own witnesses for the purposes of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law.' State v. Lyles, Op. No. 4406, (Ct. App., 2008), citing Washington v. Texas, 388 U.S. 14, 19 (1967),

Appellant was denied his right to confront his accuser.

The trial court also denied Appellant the right to confront his accuser, when it denied Appellant's attempt to recall two important witnesses: Detective Marzolf, and Sheila Curry. According to Detective Marzolf testimony, Curry disclosed to him that Gambrell gave him the guns, which run counter to Gambrell's statement that Curry took the gun without his permission. Appellant intended to clarify the disparity in the testimonies. He believed that this is material to

the case because it goes into the intent of Curry, and how it varied from that of Gambrell. The request to recall the witness is not merely for purposes of impeaching the witness, but to show that there is no unity of purpose, and that Curry intended to act independently.

Furthermore, while the law provides that it is upon the discretion of the Court to allow a witness to be recalled, Appellant avers that the interest of justice will be served if these witnesses have been allowed to testify considering that Gambrell's testimony was stricken out by the Court. It is important that the facts are set straight because Appellant's life and freedom are at stake.

The trial judge's actions in the presence of the jury suggested lack of neutrality.

Appellant's rights to due process and fair trial was impaired by the actions of the trial judge that suggested an outcome or conveyed a lack of neutrality to the jury. In several instances, the judge has showed his bias against the Appellant:

a. On showing the video of Gambrell's police interview

When Gambrell pled the Fifth Amendment, Appellant had no other way to introduce Gambrell's side of the story other than to show the latter's police interview, under the doctrine of unavailable declarant. The judge, in initially denying the same without prior viewing, offered the following:

> THE COURT: Well, let me think about that on the hand of one, hand of all. But here are my thoughts on that. First, I don't think that it exculpates your client, the reason being --I think that they had a criminal enterprises regardless of the shooting; that is, 'go get him', go get this man, go get the drugs or go get the money like he said and the other officers testified to.
>
> If the jury finds that to be the case, that's a illegal plan or scheme in that they have --the cases are replete with the nexus between drugs and guns, also drugs and violence.
>
> So, if you look at the charge of hand of one, hand of all, it says that "if two people join with another to commit an unlawful act

> then they are responsible for everything done by the other person which happens as a probable or natural consequence of the act(s) in carrying out the common plan or purpose."
>
> So therefore -- although I think probably that your client did not know that a gun—that he was going to shoot this fellow, but—the cases recognize the connection between guns, drugs and violence where the plan was illegal and it just spiraled out of hand.
>
> So, the jury may believe that he was an innocent bystander, but that's my belief as to why the video of Mr. Gambrell does not exculpate your client. "

(Carv. Trial Tr., p. 585, 6.25 & p. 586, 1.10).

b. On using the term "criminal conspiracy"

The judge had made-up his mind that there was criminal enterprise, even when the State had not illustrated that Appellant acted in unity with Curry and Gambrell in intending to take money or cocaine from Cameron or bringing him forcefully to Gambrell's.

> Mr. Gambrell tells us specifically that Curry took the gun. That is the hand of one, hand of all.
> THE COURT: I disagree. The hand of one is the hand of all is when they went down there to talk to the man about drugs and it spiraled out of control.
> Do you think if they just went down there and said --picked up the money for this gentleman, that that would have been an illegal act?
> MR. SMITH: I don't know what status that is, sir. I don't know of a criminal act here.
> THE COURT: Selling drugs and buying drugs, that as illegal as it can be.
> MR. SMITH: Sure.
> THE COURT: Going to retrieve drugs is illegal too.

(Carv. Trial Tr., p. 498, 1.19).

This comment by the Judge was made prior to hearing other witnesses for the defense.

> "THE COURT: This isn't necessarily an accomplice, but it's the hand of one, hand of all. I deny the Motion.

> I think that there are sufficient facts in the record that a jury can determine—although he might not have gone down there for the ultimate act that was committed, the jury has a right to find or could find that it was a natural and probable consequence of their initial criminal conspiracy. So I deny your Motion. "

(Carv. Trial Tr., p. 608, 22.25 & p. 609, 1.7).

Note that the judge used the term "criminal conspiracy" when the State has yet to prove an agreement or plan to commit robbery, kidnapping or drug distribution.

c. The judge's bias can be gleaned from his sentencing statement.

> THE COURT: So I—I am convinced that it was not necessarily Mr. Carver's intention to kill anybody when they went down there. But I'm equally convinced that you went down there to get the man, the money or the drugs back. As such you, engaged in a criminal conspiracy that ultimately spiraled out of control. It was notable to me that you drove away with the lights off, 911 wasn't called, that you didn't involve yourself with law enforcement until Mr. Curry was involved with the law enforcement himself. You can interpret that several ways.
>
> I think it's clear that when you start messing around with drugs, especially the type of drugs that y'all were using, a natural and probable consequence such as what ultimately happened in this case is what you will see.
>
> Also, the fact that this car of Mr. Gambrell's was used instead of yours is an indication that you did go with the intent to bring this guy back. And then you hid it after the fact, too; which is a sign that y'all knew that you had a problem.
>
> That being said and done, I think it is only fair that you be treated equally, so I am going to sentence you to thirty (30) years. You have ten days to appeal this decision. If he is entitled to any credit, give him credit for any time served. Okay?"

(Carv. Trial Tr. p. 721-22, 5.10).

Appellant believed that it was improper for a judge to comment on evidence, especially when the same was not established in the trial (i.e. no evidence presented that Appellant hid

Gambrell's car) or to suggest an outcome to the jury (i.e. "criminal conspiracy"). The trial judge did both.

CONCLUSION

For the reasons set forth above, Appellant pray to this Honorable Court that his conviction be reversed, or in the alternative, for this Court to reverse the lower court's decision denying his Motion for New Trial and allow the re-litigation of this case.

Respectfully submitted by:

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attorneydonaldsmith@gmail.com
Attorney for Appellant

Anderson, South Carolina
May 3, 2019.

FORM 7
PROOF OF SERVICE

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

R. Lawton McIntosh, Judge

Case Number: 2016A0410200556

State of South Carolina, Respondent,

v.

Jason Franklin Carver, Appellant.

PROOF OF SERVICE

I certify that I have served a copy of the Initial Brief of the Appellant, Designation of Matter to be Included in the Record on Appeal, and Proof of Service of same upon The Honorable Jenny Abbott Kitchings, Clerk of Court South Carolina Court of Appeals, at PO Box 11629, Columbia SC 29211, Assistant Solicitor for Tenth Judicial Circuit, Chelsey Hucker, at 100 S. Main Street, Anderson SC 29624; The Honorable Alan McCrory Wilson, South Carolina Attorney General and Assistant Deputy Attorney General Samuel Marion Bailey, Office of South Carolina Attorney General at PO Box 11549, Columbia, SC 29211, by depositing copies in the United States Mail, postage prepaid, on May 3, 2019.

May 3, 2019

Donald L. Smith (SC Bar#6699)
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Telephone: (864) 642-9284
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May 3, 2019

Assistant Solicitor Chelsey L. Hucker
Tenth Judicial Circuit Court
100 S. Main St.
Anderson, SC 29624

RE: State v. Jason Franklin Carver
Appellate Case No.: 2017-002011

Dear Assistant Solicitor Hucker:

Please find enclosed a copy of the Initial Brief of the Appellant and the Designation of Matter to be Included in the Record on Appeal, which I have filed in the above-mentioned case. Also enclosed is Proof of Service for the same.

If you should have any questions, please do not hesitate to contact my office.

With highest regards, I remain
Very truly yours,

Donald L. Smith
DLS/aaf
Enclosures

cc:

Honorable Jenny Abbott Kitchings, South Carolina Court of Appeals Clerk of Court
Honorable Alan McCrory Wilson, South Carolina Attorney General
Mr. Samuel M. Bailey, Asst. Attorney General

ATTORNEY OFFICE OF DONALD SMITH

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May 3, 2019

Honorable Alan McCrory Wilson
South Carolina Attorney General
Mr. Samuel M. Bailey
Asst. Attorney General
Office of South Carolina Attorney General
PO Box 11549
Columbia, SC 29211

RE: State v. Jason Franklin Carver
Appellate Case No.: 2017-002011

Dear Attorney General Wilson and Asst. Attorney General Bailey:

Please find enclosed a copy of the Initial Brief of the Appellant and the Designation of Matter to be Included in the Record on Appeal, which I have filed in the above-mentioned case. Also enclosed is Proof of Service for the same.

If you should have any questions, please do not hesitate to contact my office.

With highest regards, I remain
Very truly yours,

Donald L. Smith
DLS/aaf
Enclosures

cc: Honorable Jenny Abbott Kitchings, South Carolina Court of Appeals Clerk of Court
Chelsey Hucker, Assistant Solicitor for the Tenth Judicial Circuit

FORM 8
LETTER TO THE COURT OF APPEALS CLERK OF COURT
FILING INITIAL BRIEF OF APPELLANT AND
DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

May 3, 2019

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia SC 29211

RE: The State v. Jason Franklin Carver
Case No.: 2016A05324
Appellate Case No.: 2017-002011

Dear Ms. Kitchings:

Please find enclosed the following materials for filing:

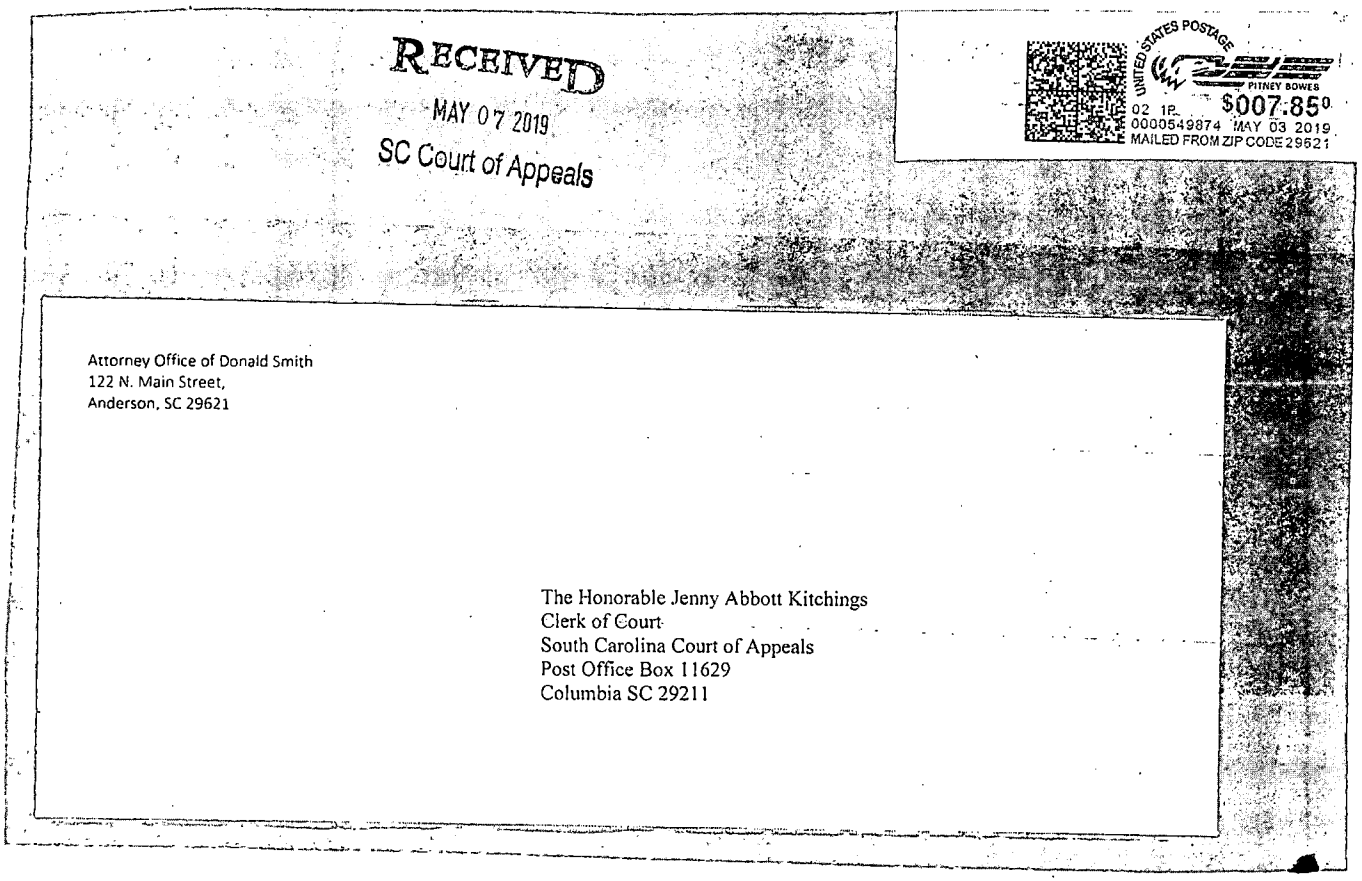
(1) Initial Brief of the Appellant;
(2) Designation of Matter to be Included in the Record on Appeal, and,
(3) Proof of Service for the same.

Sincerely,

Donald L. Smith, (SC Bar#6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Appellant

cc:

The Honorable Alan McCrory Wilson, South Carolina Attorney General
Mr. Samuel Marion Bailey, Esquire, Assistant Deputy Attorney General
Ms. Chelsey Hucker, Assistant Solicitor for the Tenth Judicial Circuit



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The Honorable Jenny Abbott Kitchings
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South Carolina Court of Appeals
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