STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Dorchester County

The Honorable Diane S. Goodstein, Circuit Court Judge

THE STATE,

Respondent,

v.

JAMES ALFONZA BIGGS, III.,

Appellant.

Appellate Case No. 2018-000393

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I. The trial court erred, and violated Biggs's right to due process, by not granting his motion for a directed verdict when the State did not offer substantial evidence which reasonably tended to prove his guilt, and where the evidence only raised a mere suspicion that he murdered the two victims.

II. The trial court erred by refusing to charge the jury with voluntary manslaughter jury instruction.

RESPONDENT'S COUNTERSTATEMENT OF ISSUE ON APPEAL

I. Did the prosecution, during its case-in-chief, present sufficient evidence to overcome the Defense's motion for a directed verdict?

II. Did the trial court abuse its discretion in refusing to instruct the jury on voluntary manslaughter where evidence did not support that Appellant shot the victims in a heat of passion upon sufficient legal provocation?

STATEMENT OF THE CASE

James Biggs ("Appellant") was indicted by the Dorchester County grand jury on two counts of murder. (R. p. 10, ll. 1-6). Appellant was tried before the Honorable Diane S. Goodstein from February 20, through February 23, 2018. (R. p. 1). He was represented by Brian Byrd, Esquire. (R. p. 1). Assistant Solicitors Sheila Mims, Esquire, and Don Sorenson, Esquire, prosecuted the case on behalf of the First Circuit Solicitor's Office. (R. p. 1). At the conclusion of the trial, the jury found Appellant guilty as indicted. (R. p. 505, l. 25 – p. 506, l. 8). Following the conviction, Judge Goodstein sentenced Appellant to life in prison for each murder. (R. p. 519, ll. 8-16). Appellant filed notice of appeal on February 27, 2018, and Attorney Franklin-Best submitted Appellant's Initial Brief on November 19, 2018. This Brief of Respondent follows.

RESPONDENT'S STATEMENT OF THE FACTS

During the evening of November 30th, 2015, victims Jamal Armstrong and Tyrell Miles were spending time with family preparing a seafood dinner. (R. p. 120, ll. 7-13; p. 143, ll. 3-6). As the meal neared completion, Jamal and Tyrell left their residence to go purchase marijuana from James Biggs (Appellant). (R. p. 124, ll. 16-24; p. 143, l. 24 – p. 144, l. 16). Appellant instructed Jamal and Tyrell to come to the neighborhood where Appellant's mother lived. (R. p. 359, l. 23 – 360, l. 1). Shortly after arriving at Appellant's mother's residence, Appellant shot killed both Jamal and Tyrell as they sat in Appellant's Pontiac Grand Am. (R. p. 176, l. 16 – p. 179, l. 22; p. 441, ll. 12-18; p. 422, ll. 15-19). Appellant fled from the scene immediately thereafter, leaving behind his car and cellphone. (R. p. 179, l. 21 – p. 181, l. 2; 110, l. 15 – p. 111, l. 4).

During trial, the State submitted multiple witnesses to support its murder case against Appellant. The State presented Jazzmin Williamson, girlfriend of victim Jamal Armstrong, who testified that she had bought marijuana from Appellant three to four times. (R. p. 119, ll. 20-21; 124, l. 16 – p. 125, l. 1; p. 127, ll. 16-20). On at least one of those occasions she bought it from Appellant while sitting in his Pontiac. (R. p. 126, l. 2 – p. 127, l. 15). Hunter Eadie also testified that he had bought marijuana from Mr. Biggs, including on the day of the murder. (R. p. 160, 3-18). That day he was instructed by Appellant to meet at Appellant's mother's house. (R. p. 160, l. 18 – p. 161, l. 12). Once there, he was instructed to get into Appellant's car, where the transaction took place. (R. p. 162, l. 5 – p. 164, l. 23). The transaction with Mr. Eadie took place shortly before the murders, and Eadie testified that there was no one else there at that time. (R. p. 165, ll. 3-8).

The State presented additional testimony from former Lincolnville Police Officer Mattie Ingalls , who had pulled over Appellant in his Pontiac for doing over 100 mph in a 35 mph speed zone the day before the murder. (R. p. 255, l. 18 – p. 256, l. 4). Once pulled over, Ingalls smelled marijuana. Appellant's car was searched and a small amount of marijuana was located. Appellant was written a ticket for the minor possession and reckless driving, and was allowed to leave. (R. p. 255, l. 4 – p. 260, l. 2; p. 261, l. 23 – p. 262, l. 5).

The State also presented cell phone records from Appellant, showing a phone conversation between Appellant and victim Tyrell Miles, and a text message summoning him to Appellant's mother's neighborhood approximately fifteen minutes before the murder. (R. p. 347, l. 2 – p. 361, l. 4).

The State also presented Brandon Stancil. Stancil is the boyfriend of Appellant's mother, and was at the house at the time of the murder. He testified that he pulled into the driveway of Appellant's mother's home during the evening of November 30th. (R. p. 94, l. 22 – p. 100, l. 12). Upon arrival, he saw Appellant's Pontiac Grand Am departing the driveway. He testified that he waved and proceeded inside. (R. p. 100, l. 19 – p. 101, l. 13). Shortly after, he hears shots and screaming. (R. p. 102, l. 21 – p. 104, l. 24). After calling 911, Stancil testified that he went outside and discovered the victims dead inside Appellant's Pontiac. (R. p. 104, l. 25 – p. 108, l. 20). Appellant was nowhere to be found. (R. p. 110, l. 15 – p. 111, l. 15). Alexander Coutu, a nearby neighbor, testified that he too heard shots. He then heard someone screaming for their life, which was quickly followed by additional shots. (R. p. 214, l. 4 – p. 219, l. 2).

The State's key testimony came from Brandon Woodall and Emily Robbins. They too were summoned to Appellant's mother's house the evening of November 30th, after contacting Appellant to purchase marijuana. (R. p. 170, l. 19-21; p. 171, l. 14 – p. 173, l. 22; p. 194, l. 21 –

p. 195, l. 20). Brandon and Emily testified that they pulled up to the front of the house and Appellant walked out to their car. (R. p. 177, ll. 11-18; p. 197, ll. 7-15). They testified they handed Appellant $10, he told them to pull in the driveway. (R. p. 176, l. 16-20; 177, ll. 19-22; p. 198, ll. 5-9). Appellant then walked away. They testified they could make out Appellant standing outside his car. (R. p. 178, ll. 16-20). Soon after, the couple heard gun shots followed by yelling. (R. p. 179, ll. 7-22; p. 199, ll. 4-11). They testified that they immediately started backing out to escape the violence. (R. p. 176, l. 20-25; p. 179, l. 24 – p. 180, ll. 6-8; p. 201, ll. 14-25). As they did, they testified that they saw Appellant moving toward the road. (R. p. 180, ll. 11-20; p. 181, ll. 1-2; p. 201, ll. 10-13). They did not see anyone else. (R. p. 180, ll. 23-25; p. 200, ll. 9-10). Brandon Woodall also testified that he later received a threatening phone call from Appellant and another unknown individual. (R. p. 181, l. 12 – p. 182, l. 4).

ARGUMENT

I. The Circumstantial Evidence Presented By The State Was Sufficient To Overcome The Defense's Motion For A Directed Verdict.

Standard of Review

"On appeal from the denial of a motion for directed verdict, this Court must view the evidence in a light most favorable to the State." *State v. Burdette*, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999) (citing *State v. Schrock*, 283 S.C. 129, 322 S.E.2d 450 (1984)). "If there is any direct evidence or any *substantial circumstantial evidence* reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury. *State v. Cherry*, 361 S.C. 588, 593–94, 606 S.E.2d 475, 478 (2004) (citing *State v. Harris*, 351 S.C. 643, 653, 572; S.E.2d 267, 273 (2002)) (emphasis added); *State v. Venters*, 300 S.C. 260, 264, 387 S.E.2d 270, 272-73 (1990)); *see also State v. Gaster*, 349 S.C. 545, 564 S.E.2d 87 (2002) (holding that on an appeal from trial court's denial of a motion for a directed verdict, appellate court may only reverse the trial court if there is no evidence to support the trial court's ruling).

Legal Analysis

Appellant argues the trial court erred in denying his motion for a directed verdict because the State failed to present substantial evidence which reasonably tended to prove his quilt. "When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." *Cherry*, at 593, 606 S.E.2d at 477–78. "If the State presents any evidence which reasonably tends to prove defendant's guilt, or from which defendant's guilt could be fairly and logically deduced, the case must go to the jury." *Burdette*, at 46, 515 S.E.2d at 531 (citing *State v. Poindexter*, 314 S.C. 490, 431 S.E.2d 254 (1993)). The

record in the present case supports the trial judge's denial of Appellant's directed verdict motion because the State presented substantial circumstantial evidence supporting Appellant's guilt.

The State acknowledged at trial that the case was based on circumstantial evidence. "Circumstantial evidence [. . .] is proof of a chain of facts and circumstances from which the existence of a separate fact may be inferred." *State v. Rogers*, 405 S.C. 554, 563, 748 S.E.2d 265, 270 (Ct. App. 2013) (citing *State v. Cherry*, 361 S.C. 588, 596, 606 S.E.2d 475, 479 (2004)). "Circumstantial evidence is 'based on inference and not on personal knowledge or observation,' *Black's Law Dictionary* 636 (9th ed.2009), and establishes 'collateral facts from which the main fact may be inferred.'" *Id.* (citing *State v. Salisbury*, 343 S.C. 520, 524 n. 1, 541 S.E.2d 247, 249 n. 1 (2001).

The State presented the following circumstantial evidence at trial:

1. Brandon Stancil's testimony confirming that Appellant's Pontiac Grand Am was parked at the murder scene minutes before the murder (R. p. 94-111);
2. Jazzmin Williamson and Tiffany Bowens attesting that the victims went to Appellant's mother's house to purchase marijuana from Appellant and that neither victim owned guns (R. p. 119-127; p. 145-146).
3. Hunter Eadie's testimony that he purchased marijuana from Appellant at the murder scene minutes before the murder and that Appellant was the only person present (R. p. 160-165);
4. Brandon Woodall's and Emily Robbins's testimony placing Appellant at the murder scene immediately prior to and immediately after the murder (R. p. 170-201);
5. Alexander Coutu's testimony affirming that he heard gunshots followed by an individual screaming for their life (R. p. 214-219; and

6. Detective Smith's testimony highlighting the phone calls and text messages between Appellant and the victims, in which Appellant summons them to his mother's house to purchase marijuana (R. p. 347-361).

Despite the weight of the circumstantial evidence, Appellant relies to *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2011), for the proposition that the State's evidence was inadequate to survive a directed verdict motion. There, the South Carolina Supreme Court reversed upon finding that the State's evidence raised only a suspicion of guilt. Appellant's argument fails to recognize that the evidence submitted by the State in the present case rose to a higher standard than mere suspicion. The State presented substantial circumstantial evidence of guilt, including: cell phone records in which Appellant summons the victims to the crime scene (R. p. 347, l. 2 – p. 361, l. 4), multiple eye witness testimony placing Appellant at the scene immediately before, during, and after the murders (R. p. 160, l. 18 – p. 161, l. 12; p. 177, l. 5 – p. 181, l. 2; p. 198, l. 2 – p. 201, l. 25), and testimony describing a threatening phone call made by Appellant to a witness immediately after the murder (R. p. 181, l. 12 – p. 182, l. 4). Appellant also attempts to attack the credibility of witnesses Brandon Woodall and Emily Robbins. However, "[t]he assessment of witness credibility is within the exclusive province of the jury." *See State v. McKerley*, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct.App.2012) (citing *State v. Wright*, 269 S.C. 414, 417, 237 S.E.2d 764, 766 (1977)). Clearly the jury found the credibility Woodall's and Robbins's testimony sufficient to convict Appellant.

Appellant also cites to *State v. Schrock*, 283 S.C. 129, 134, 322 S.E.2d 450, 452-53 (1984), *State v. Arnold*, 361 S.C. 386, 605 S.E.2d 529 (2004), to suggest that the trial court must grant a directed verdict if the State fails to present evidence placing the defendant at the scene of the crime. In *Schrock* and *Arnold*, the Court held that the State did not produce substantial

circumstantial evidence of the defendant's guilt and noted that the State presented no evidence that the defendant was at the scene. In this case, unlike *Arnold* and *Schrock*, the State offered substantial circumstantial evidence of Appellant's presence at the murder. Hunter Eadie, who purchased marijuana from Appellant immediately prior to the murder, confirmed that they met at the scene shortly before the murder. *See* R. p. 160, l. 18 – p. 161, l. 12. Moreover, Brandon Woodall and Emily Robbins both testified that they were approached by Appellant at the murder scene mere seconds prior to the shooting and witnessed Appellant fleeing from the vehicle immediately after. *See* R. p. 160, l. 18 – p. 161, l. 12; p. 177, l. 5 – p. 181, l. 2; p. 198, l. 2 – p. 201, l. 25. Considering the depth of the circumstantial evidence presented by the State, the trial court was proper in denying Appellant's directed verdict motion.

II. Trial Court Did Not Abuse Its Discretion In Refusing To Instruct The Jury On Voluntary Manslaughter Because The Evidence Presented Failed To Support That Appellant Shot The Victims In A Heat Of Passion Upon Sufficient Legal Provocation.

Standard of Review

"The law to be charged must be determined from the evidence presented at trial." *State v. Knoten*, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). "In determining whether the evidence requires a charge of voluntary manslaughter, the Court views the facts in a light most favorable to the defendant. *Id.* (citing *State v. Byrd*, 323 S.C. 319, 474 S.E.2d 430 (1996)). "Declining to charge the lesser included offense is warranted when it 'very clearly appear[s] that ... no evidence whatsoever [exists] tending to reduce the crime from murder to manslaughter.'" *State v. Gibson*, 390 S.C. 347, 355–56, 701 S.E.2d 766, 770–71 (Ct. App. 2010) (quoting *State v. Brayboy*, 387 S.C. 174, 179, 691 S.E.2d 482, 485 (Ct.App.2010); *State v. Cole*, 338 S.C. 97, 101, 525 S.E.2d 511, 513 (2000). "In order to amount to reversible error, the failure to give a

requested charge must be both erroneous and prejudicial." *Id.* (citing *State v. Patterson*, 367 S.C. 219, 232, 625 S.E.2d 239, 245 (Ct.App.2006).

Legal Analysis

The Trial Court did not err in refusing to instruct the jury on voluntary manslaughter because there was no direct evidence that Appellant acted in a sudden heat of passion under sufficient legal provocation. In *State v. Cole*, the Supreme provided the following definition of voluntary manslaughter:

> Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. Heat of passion alone will not suffice to reduce murder to voluntary manslaughter. Both heat of passion and sufficient legal provocation must be present at the time of the killing. "The sudden heat of passion, upon sufficient legal provocation, which mitigates a felonious killing to manslaughter, while it need not dethrone reason entirely, or shut out knowledge and volition, must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence."

State v. Cole, 338 S.C. 97, 101–02, 525 S.E.2d 511, 513 (2000) (internal citations omitted).

In his initial brief, Appellant cites to *Dempsey v. State*, 363 S.C. 365, 371, 610 S.E.2d 812, 815 (2005), *State v. Knoten*, 3487 S.C. 296, 307, 555 S.E.2d 391, 397 (2001), and *State v. Pittman*, 373 S.C. 527, 573, 647 S.E.2d 144, 168 (2007) to support *provocation*. However, Appellant fails to address the lack of evidence indicating that he killed the victim's in a *heat of passion*. *See State v. Walker*, 324 S.C. 257, 260, 478 S.E.2d 280, 281 (1996) ("Both heat of passion and sufficient legal provocation must be present at the time of the killing."). It would appear from the Record that the lack of evidence reflecting heat of passion was the reason the Trial Court refused to charge voluntary manslaughter. Specifically, the Trial Court reasoned:

> With regards to voluntary manslaughter, of course, the elements of voluntary manslaughter are that a charge on voluntary manslaughter is not appropriate where there

> is no evidence that the Defendant shot the victims in the heat of passion upon sufficient legal provocation. Of course, the definition of voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation and there is simply is no evidence to support that charge. I would note that even in your argument your statement was no one knows why he was scared.

(R. p. 503, ll. 1-12).[1]

The trial court made a correct assessment that the evidence did not support Appellant's charge request because being "scared" does not conform with voluntary manslaughter charge. "Voluntary manslaughter, by definition, requires a criminal intent to do harm to another." *State v. Niles*, 412 S.C. 515, 523, 772 S.E.2d 877, 881 (2015) (quoting *State v. Childers*, 373 S.C. 367, 375–76, 645 S.E.2d 233, 237 (2007)). As suggested by the record, if Appellant fired at the victims, it was out of fear. However, this allegation would insinuate a lack of criminal intent. Under Appellant's theory, the defense of self-defense would have been more appropriate under these circumstances. Nevertheless, the issue preserved and now raised by Appellant is the lack of voluntary manslaughter.

In the South Carolina Supreme Court case *State v. Starnes*, the petitioner claimed error from the trial court's refusal to charge the jury on voluntary manslaughter during his double murder trial. *State v. Starnes,* 388 S.C. 590, 599–600, 698 S.E.2d 604, 609 (2010). In that case, the South Carolina Supreme Court provided a thorough explanation on the evidence necessary to

[1] This is the only portion of the trial record that reflects Appellant's argument as to why he was entitled to a voluntary manslaughter charge. While this testimony insinuates that an off the record conference occurred, the record fails to show Counsel's argument in support of the charge request. *See State v. Harrison*, 343 S.C. 165, 539 S.E.2d 71, (Ct. App. 2000) (Numerical references made by appellant during his post charge objection "reveal either a charge conference took place or defense counsel presented the judge with various numbered charge requests prior to the judge's instruction to the jury."); *but see Gilchrist v. State*, 364 S.C. 173, 178, 612 S.E.2d 702, 705 (2005) ("When given the opportunity, counsel must articulate a reason for the requested charge."); *Medlock v. One 1985 Jeep Cherokee*, 322 S.C. 127, 470 S.E.2d 373 (1996) (The appellant has the burden of presenting a record sufficient to allow the appellate court to make a decision).

entitle a voluntary manslaughter charge and its relationship to self-defense. The Court provided the following:

> Turning to the facts of this case, viewing the evidence in the light most favorable to Appellant, there is no evidence to support a voluntary manslaughter charge. Appellant testified when he turned around and saw Bill pointing a gun at him, "I shot Bill Welborn and then turned and shot Jared Champlin." He added, "I was scared and I was frightened. When Jared pulled the gun on Jody, it scared me." While this testimony is evidence that Appellant was in fear, there is no evidence Appellant was out of control as a result of his fear or was acting under an uncontrollable impulse to do violence. The only evidence in the record is that Appellant deliberately and intentionally shot Jared and Bill and that he either shot the men with malice aforethought or in self-defense.
>
> Again, we emphasize self-defense and voluntary manslaughter are not mutually exclusive, and had there been evidence to support a finding of heat of passion upon sufficient legal provocation, Appellant would have been entitled to a voluntary manslaughter charge. The record is simply devoid of such evidence. In our view, to hold that Appellant was entitled to a voluntary manslaughter charge under the facts of this case would impermissibly blend the elements of voluntary manslaughter and self-defense. In effect, such a holding would render voluntary manslaughter a lesser-included offense of self-defense, for where there is an intentional killing based on fear alone, a defendant would be entitled to a voluntary manslaughter charge.
>
> For these reasons, we hold the trial court properly refused to charge voluntary manslaughter.

Starnes, 388 S.C. at 599, 698 S.E.2d at 609.

Similarly, in *State v. Cole*, the petitioner claimed error from the trial court's refusal to charge voluntary manslaughter. At trial the petitioner testified that he shot at the victim out of fear. *Cole*, 338 S.C. at 102, 525 S.E.2d at 513. Again, the Court held:

> [T]here was no evidence presented that Appellant was overcome by a sudden heat of passion as would produce an uncontrollable impulse to do violence. On the contrary, by Appellant's own testimony, he shot at the men to scare them away. Appellant's testimony appears designed to support a charge of self defense, not heat of passion.

Id. (internal quotations omitted).

Like *Starnes* and *Cole,* there is no evidence in the Record that Appellant acted in a "heat of passion." The defense did not present *any* witnesses at trial. Furthermore, none of the

testimony presented during that State's case reflected that Appellant acted in a heat of passion. *See Cole*, 338 S.C. at 102, 525 S.E.2d at 513, ("The trial court did not err in refusing to instruct the jury on voluntary manslaughter because there was no evidence of sudden heat of passion or sufficient legal provocation.").

Despite Appellant's argument, the Record also lacks evidence reflecting sufficient provocation. *See State v. Childers*, 373 S.C. 367, 373, 645 S.E.2d 233, 236 (2007) (citing *State v. Cole*, 338 S.C. 97, 101, 525 S.E.2d 511, 512 (2000) ('The law to be charged must be determined from the evidence presented at trial")). While several witnesses testified that they heard screaming prior to the shooting, nobody directly witnessed any type of physical altercation between Appellant and the victims. Appellant seeks support by the fact that law enforcement investigated the possibility that the shooting resulted from a robbery attempt. This was presented to the jury through testimony of Detective Adam Smith who acknowledged that it was initially a theory, but was uncorroborated do to the lack of supporting evidence. (R. p. 372, l. 21 – p. 389, l. 24). Moreover, evidence presented at trial contradicted this robbery theory. Tiffany Bowens testified that neither victim possessed a firearm, and the responding officer, Jeff Scott, testified that no firearms were found at the scene or on either of the victims. (R. p. 145, l. 25 – p. 146, l. 5; 249, ll. 1-4).

Alternatively, Appellant's possession of a firearm during the drug deal, and the ballistics conducted on the victims, supports a finding of malice which would exclude voluntary manslaughter. *See* S.C. Code Ann § 16-3-50 (defining Manslaughter as "the unlawful killing of another without malice, express or implied."); *State v. Blassingame*, 271 S.C. 44, 46, 244 S.E.2d 528, 529 (1978) ("Voluntary manslaughter, of course, is an offense which does involve intent on the part of the perpetrator but lacks the element of malice."); *see also State v. Cottrell*, 421 S.C.

622, 643–44, 809 S.E.2d 423, 435 (2017) (citing *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009) (*Belcher* does not "restrict the State from arguing to the jury for a finding of malice from the use of a deadly weapon . . .."). The evidence presented at trial supports that Appellant was the only party who possessed a weapon at the time of the murder. Agent Chad Smith, a firearms expert with SLED, testified that all the expended bullets that were recovered from the victims were fired by the same firearm. (R. p. 277, ll. 17-25; p. 287, ll. 3-20). The South Carolina Supreme Court's opinion in *State v. Whitesides* reflects a position that possession of a weapon while dealing drugs is inherently malicious. *State v. Whitesides*, 397 S.C. 313, 725 S.E.2d 487 (2012). In *Whitesides* the Court ruled in the context of possession of a firearm during commission of a violent crime. The Court concluded, "[a] nexus may be established by showing that the firearm furthered, advanced, or helped in the commission of the crime. A nexus between possession of a firearm and drug trafficking would exist if the firearm is accessible to the trafficker and thereby provides defense against anyone who may attempt to rob the trafficker of his drugs or drug profits." *Id.*, 397 S.C. at 319, 725 S.E.2d at 490 (internal quotations omitted). Federal law shares a similar position in that it has long found individuals who bring a firearm to a drug deal to be criminally culpable under 18 U.S.C. § 924(c). In regards to the ballistics, Dr. Nicholas Batalis, forensic pathologist, testified that Miles had been shot three separate times: two to his back, and once in the backside of his head. (R. p. 419, ll. 16-22). Dr. Batalis further testified that Jamal Armstrong had been shot four separate times: one to the back of his head, one to the right side of his face, one to the right side of his jaw, one to his right shoulder, and one to the left side of his chest. (R. p. 425, l. 22 - 439, l. 16). The quantity of rounds found in each victim, along with the fact that nearly all rounds impacted Miles and Armstrong in the back of their bodies clearly reflects a level malice existed at the time Appellant opened fire. For this

reasons the Trial Court did not err in declining to instruct the jury on voluntary manslaughter. There was evidence of malice but no evidence of heat of passion.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the appeal be dismissed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This 18th day of June, 2019.

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Assistant Attorney General

ATTORNEY FOR RESPONDENT