THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

R. Lawton McIntosh, Judge

Appellate Case No.: 2017-002011

State of South Carolina, Respondent,

v.

Jason Franklin Carver, Appellant.

REPLY BRIEF OF THE APPELLANT

August 7, 2019

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STATEMENT OF THE CASE

Appellant adopts and incorporates by reference the Statement of Case and Facts presented in his Initial Brief. This suit is brought pursuant to Appellant's indictment and subsequent conviction for the murder of Steven Cameron, under the "hand of one, hand of all" theory. Appellant timely filed his Notice of Appeal and filed his Initial Brief on May 16, 2018. Respondent filed its Initial Brief on July 30, 2018.

ARGUMENTS

I.

THE EVIDENCE PRESENTED QUALIFIED AS AFTER-DISCOVERED EVIDENCE AND WOULD HAVE CHANGED THE RESULTING CONVICTION.

Respondent contends that the evidence submitted by Appellant in his Motion of New Trial do not qualify as after-discovered evidence. It stated:

> Appellant was aware of any alleged inconsistencies at the time of the trial because the (sic)was present during the circumstances to which Curry testified and Gambrell swore to. Therefore, he had knowledge of any alleged inconsistencies testified during trial.

Appellant was not a participant in the trial of Gambrell. He was not even informed of the trial. Appellant's counsel had to exert due diligence to discover that Gambrell was charged with a different offense, despite the State's theory of accomplice liability. The only way Appellant learned about the inconsistencies in Curry's testimony during Gambrell's trial was because Appellant's counsel sat as an observer during the trial. He was not permitted to cross-examine both Curry and Gambrell at that time.

The inconsistencies in Curry's testimony raises questions on the credibility of this entire testimony regarding Appellant's involvement in the shooting of Cameron.

Curry's inconsistent testimony is material to the issue of guilt because the State used it to make a case for murder, an intentional crime. The State posits that Curry carrying the guns were meant to threaten or intimidate Cameron to accede to returning the drugs, giving its monetary equivalent or going back to Gambrell's house. According to the State's theory, by bringing the gun to Cameron's place, Appellant and Curry intended to commit either the offense of intimidation, drug conspiracy, kidnapping and/or murder.

The inconsistent statement of Curry could not have been discovered before he Appellant's trial by the exercise of due diligence because they have been presented during Gambrell's trial, which took place nearly a year after Appellant started serving his sentence. Appellant could not have anticipated Curry issuing false testimonies to the court. Thus, they can only be discovered after Appellant's trial.

Appellant believes that this discovery would change the result of Appellant's trial. Without the testimony on the gun, the prior knowledge of the missing drugs and Appellant allegedly volunteering to drive to Cameron's house, the State could not attribute motive and means in the commission of the crime. Appellant could not have committed an intentional offense when he had no knowledge of the same.

With regards to the law enforcement's testimony regarding the dirt bike, Respondents downplayed it as hearsay and devoid of exculpatory value. (Initial Brief of the Respondent, p. 16). Respondent's contend that "(B)ecause the victim had gone to Gambrell's home to sell a dirt bike on the day of the murder, the mention of "dirt bike" during the altercation is unsurprising and does not change the circumstances of the murder." *Ibid.*

Contrary to Respondent's arguments, Appellant believed that police reports and law enforcer's testimony may be considered as records of regularly conducted activity, and as such is an exception to hearsay rule.

The law enforcer testified having interviewed a neighbor of Cameron. The neighbor overheard a discussion on dirt bike. The neighbor was not privy to the transaction involving the dirt bike. Taken with other arguments and evidence presented by Appellant, the mention of "dirt bike" can be an exculpatory evidence, as it goes to the issue of motive (or lack of ill motive). This information which the police authorities concealed from the Appellant, could help establish and support his claim that he had no prior knowledge of any drug stolen by Cameron. As stated in his Initial Brief, the only thing Appellant knew about Cameron being at Gambrell's house was to sell his (Cameron's) dirt bike.

Respondent contends that since the record showed that Appellant was aware of Cameron's aggressive tendencies at the time of his trial, any evidence substantiating the same cannot be presented as after-discovered evidence.

First, Appellant submitted that the misleading statements of law enforcers were not introduced by Appellant as an after-discovered evidence but as an evidence of fraud and/or falsity, which entitled Appellant to a new trial; if not a dismissal of the charge.

Respondent claims that the questioned testimony was meant purely to impeach Marzolf's testimony. (Respondent's Initial Brief, p. 17). Petitioner insists that he submitted such discovery not to substantiate victim's character, but to show Respondent's intentional act of presenting false, misleading and/or incomplete evidence in court. Respondent asserts that the evidence offered was available to Appellant during his trial. Appellant could not and would not have

discovered the lies and misrepresentations that occurred during Gambrell's trial, as it transpired months after his oen trial concluded.

Appellant is confident that a new trial, wherein the jury is presented with all the misleading and false and incomplete information on this case, would result in Appellant's acquittal.

Deferral of sentence

Respondent related the issue of Curry's deferred sentencing as part of the vast prosecutorial discretion. It further cited the case of State v. Wright, 269 S.C. 414 to advance its claim that "the deferred sentencing of co-defendants until after an appellant's trial does not encourage perjury". Respondent cited:

> An unsentenced co-defendant is a competent witness for the State. Taylor v. State, 228 S.C. 369, 188 S.E.2d (1972); State v. Lewis, 255 S.C. 466, 179 S.E.2d 616 (1971), it is exceedingly clear to us that appellant has failed to demonstrate a denial of his Due Process rights in the court's allowance of Lazarus' and Stanley's testimony before sentencing them. This ground is without merit

First, Appellant posits that deferral of sentencing is within the purview of the court and not a prosecutorial discretion.

Second, Appellant submits that Wright doctrine does not apply in this case due to difference in circumstances. In Wright, the co-defendants' sentencing was deferred until the conclusion of Appellant's trial. In this case, Curry took the plea immediately prior to Appellant's trial. Curry's sentence was deferred until after Appellant's trial. (Transcript of Curry's Plea bargaining, p. 3, 16-17). Appellant was not informed that Curry's sentencing was extended. He discovered this information only after the Gambrell trial where Curry was called as State's witness.

In Wright, the co-defendants were the only witnesses against Appellant. The co-defendants' testimonies were consistent with one another. In this case, Curry, the shooter, was used as the prosecution's witness against his two co-defendants. He testified in two separate trials, where he was found to have offered conflicting statements. Thus, the doctrine at Wright does not apply in this case.

On the issue of withheld evidence, Appellant submits that Rule 5 (c) of South Carolina Rules of Criminal Procedure mandate the State a continuing duty to disclose.

> If, prior to or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under this rule, he shall promptly notify the other party or his attorney or the court of the existence of the additional evidence or material.

This law requires that State to 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. If the State fails to comply with the aforementioned requirement, the court may prohibit the party from introducing evidence not disclosed, among other things. [1]

Appellant avers that the totality of Respondent's conduct prior to, and during the trial was questionable and was considered as violative of the Rules of Criminal Procedure. Respondent failed to provide Appellant material evidence, which is not limited to the defective audio recording, but also included the recording of prosecutor's visit to Curry in prison to negotiate the terms for his plea bargaining and statements from law enforcement. Respondents abused its discretion when it unilaterally extended Curry's deferred sentence. More importantly,

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[1] Rule 5(d)(2) Failure to Comply With a Request. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances. The court may specify the time, place and manner of making the discovery and inspection and may prescribe such terms and conditions as are just.

Respondents offered a dubious witness like Curry, who flipped on his testimony as often as he did.

II.

THE TRIAL COURT ABUSED ITS DISCRETION IN INSTRUCTING THE JURY WITH THE "HAND OF ONE, HAND OF ALL" THEORY.

Appellant concedes that ordinarily, an appellate court will not reverse the trial court's decision regarding a jury charge, absent an abuse of discretion. *State v. Brandt,* 393 S.C. 526, 550, 713 S.E.2d 591, 603 (2011). In *Carlyle v Tuomey Hospital*, the Court defined that abuse of discretion as occurring "when the ruling is based on error of law or factual conclusion that is without evidentiary support." *Carlyle v. Tuomey Hospital,* 305 S.C. 187, 193, 407 S.E.2d 630, 633 (1991). Appellant contends that in this case, the trial judge abused his discretion in instructing the jury with the "hand of one, hand of all" theory because the overwhelming evidence did not support the instruction.

The "hand of one, hand of all", otherwise known as the accomplice liability doctrine 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. No evidence was presented that will show Appellant's common design and purpose with the self-confessed shooter, Curry.

The uncontroverted facts and evidence in the present case are as follows:

(1) Appellant was at Gambrell's house to work on a car, a side job he has been doing to supplement his income.

(2) Gambrell instructed Appellant to bring Cameron home, as Cameron had no ride following the sale of his motorcycle; and Gambrell was admittedly intoxicated.

(3) Carver had no knowledge of any stolen item/s as he was not in Gambrell's house when the latter discovered the missing cocaine. (Detective Kreig Marzol, Trial Tr. 344:23-25; 345:1-2).

(4) As he was pulling up to Gambrell's driveway, Carver was instructed by Gambrell to drive back to Cameron's house to bring him back to Gambrell's residence.

(5) Curry had two (2) guns, and Appellant has none. (Id., 345:3-14, Woodrow Curry Trial Tr. 391:21-25; 392:1-3; 393:9-13).

(6) In his Sworn Affidavit, Gambrell stated that Appellant had no gun on the day of the shooting. (Gambrell Affidavit).

(7) Curry had a heated exchange with Cameron. Curry shot Cameron and after being apprehended by the police, confessed to shooting the deceased. (Woodrow Curry Trial Tr., 369).

(8) Appellant did not shoot, abet, aid or assist Curry in shooting the victim.

(9) In fact, he attempted to avoid any such incident when he told Curry to leave the gun in the car (which he did); and, he also screamed at him to put the subject gun away, of which Appellant was unaware.

(10) State did not introduce any gun purportedly belonging to Appellant, nor were his fingerprints found on any weapon in the State's possession.

(11) No drugs were found on the deceased's person and property, nor from the Appellant's. No evidence was presented during the trial to support the State's assertion of drug distribution gone wrong.

(12) Curry threatened his own wife and Carver if they told anyone about the incident. (Detective Kreig Marzolf Trial Tr. 350; Sheila Curry Trial Tr. 456:13-17).

Respondent cited the case of *Barber v. State*, 393 S.C. 232, 236 (2011) in establishing the accomplice liability. The Court in *Barber* found that the judge was justified in charging the jury with accomplice liability because "the sum of the evidence presented at trial, both by the State and defense, was equivocal as to who was the shooter." (Respondent's Initial Brief, p. 8). In Barber, all of his co-conspirators testified that Barber was armed with a semi-automatic handgun and shot the victim. (Barber, 235). More importantly, it was established early on in the trial that Barbers and his companions conspired to rob the victim Heintz. This was clearly the objective because when they learned that there were more occupants in the Heintz house, they left to procure a second firearm before returning to the Heintz'.

Unlike in Barber, where the intent of the conspirators was established among themselves, there was no such unity of intent, nor action in the present case. Appellant, in driving back to Cameron's house had no prior knowledge of (a) any stolen item belonging to Gambrell's; (b) Gambrell's instructions to Curry); (c) Curry having any gun in his person. (Trial Tr., 391:21-25, 392:1-3, 393:9-13). Thus, there was no common design, no prior agreement or plan concocted among the three. Appellant could not have agreed to something he did not know. Appellant was not guilty of a crime he took Cameron home; and therefore, he could not be guilty of a crime for bringing him back. Gambrell was still intoxicated and Cameron did not have a ride.

There was no evidence of unity in action. Appellant's only participation in the events of March 28, 2016 was to transport Cameron to his house, and back to Gambrell's. As far as Appellant knew, Cameron had a transaction with Gambrell involving his bike. Appellant surmised that the late instruction had something to do with the bike sale. Appellant was instructed to drive Cameron because he already knew where the latter lived, having taken him to his house an hour prior.

Appellant did not conspire with Curry (nor Gambrell). Nothing can be gleaned from his overt acts prior to, during and subsequent to the shooting incident. From this viewpoint, Appellant avers that there are several facts of substance that militate against the finding that he conspired or acted in unison with Curry (or even with Gambrell):

(1) There is no enmity or grudge between Appellant and Cameron.

(2) Appellant had no verbal nor physical interaction, before nor during the shooting incident.

(3) Appellant had no prior knowledge of any missing nor stolen item and could not have known that Curry's purpose in tagging along was to get Gambrell's missing item.

(4) No malicious intent can be attributed to Appellant in following what appeared to him as harmless errand to transport Cameron to and from his house. Gambrell's instruction, on its face, is not unlawful nor illegal.

(5) Appellant was unarmed during the incident, negating intent to coerce, threaten, inflict physical harm, much less kill the victim. By prosecution's witness statement, Appellant's participation was limited to him driving the car. Carver's driving was not necessary nor indispensable to the commission of the crime of murder. Curry could have still shot or injured Cameron at any other time they met. Carver was at the wrong place at the wrong time.

(6) 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 the gun in the car, which he did.

(7) Upon seeing Curry with a second gun, which he brandished during his heated exchange with Cameron, Appellant pleaded with Curry to put the gun away.

(8) Appellant ran towards the car, intending to leave Curry, when the shooting started.

(9) Curry threatened Appellant at gun point and ordered him to drive with the lights out until they had left Sterling Bridge Road (a fact which was proven by the surveillance video).

(10) The State did not offer this fact to Appellant. He had independent knowledge of the headlights not being engaged.

(11) Appellant's act of driving Curry back to Gambrell's, was done under extreme duress, as Curry threatened Appellant and his mother's lives.

(12) Due to his extreme fear for his and his mother's safety, Appellant was unable to tell the police anything during their first encounter at Appellant's workplace. However, the moment the threat ceased upon Curry's arrest, Appellant voluntarily presented himself to the ACSO.

(13) Curry was arrested due to his presence at Gambrell's home where Anderson County executed a search warrant of Gambrell's home, finding Curry and cocaine. Curry took responsibility for the cocaine, seemingly because of his business relationship with Gambrell.

Taken together, these acts by the Appellant do not meet the test of moral certainty to establish that he acted in unity and purpose with Curry in the commission of the crime of murder. There is no evidence that Appellant agreed and conspired with Curry to commit an illegal act. Appellant did not aid, abet or assist in Curry's shooting of Cameron. Appellant, at several

instances, tried to stop Curry from using his gun. Thus, the trial judge committed abuse of discretion when he chose to charge the accomplice liability theory, despite all the evidence showing no conspiracy or unity in action and intent between Curry and the Appellant. It was an error of law.

II.

THE TRIAL COURT ERRED IN NOT RULING FOR A DIRECTED VERDICT.

Respondent avers that it presented sufficient evidence to overcome Appellant's Motion for a Directed Verdict. To bolster its case, the State cited the case of *State v. Harry*, 420 S.C. 290, 803 S.E.2d 272 (2017). The Supreme Court in *State v. Harry* affirmed the trial court's denial of the motion for directed verdict, holding that "the evidence yielded a reasonable series of inference consistent with the State's theory that Appellant engaged in a scheme to commit an illegal act, the result of which was Victim's shooting death, and the trial court properly denied Appellant's motion for a directed verdict. Id. 300, 803 S.E.2d at 277." (Initial Brief of Respondent, p. 11).

Appellant contends that the ruling in *State v. Harry* cannot be applied in this case as they are not on point. In *Harry*, the evidence pointed to a conspiracy or a prior agreement between Appellant Harry and the shooter Castro: Harry went out of his way to drive 16.3 miles to employ the help of Castro in retrieving his television[2]; Harry knew Castro carries a gun; Harry did not prevent the shooting, and in fact instigated it [3], and Harry had an elaborate escape plan for Castro. These actions by Harry showed conscious and deliberate act of agreement with Castro's felonious actions. The hand of one is hand of all theory applies in his case because he was present and aided and assisted Castro in the shooting of the victim.

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[2] Instead of proceeding directly to Victim's nearby home, Appellant instead drove 16.3 miles to the Myrtle Beach home of his friends, and fellow drug dealers, Tommy Byrne and Saire Castro. State v Harry, at 295.

[3] According to Castro's own testimony, Appellant "gave ... [a] head nod" just prior to Castro firing the fatal shots. State v Harry, at 300.

None of such actions can be attributed to herein Appellant. He had no motive nor means to harm Cameron, no knowledge of Curry's plan, voiced disagreement with Curry carrying a gun, ran away when Curry refused to lower the gun, and presented himself to the police voluntarily once the threat to his and his mother's lives ceased. Appellant's actions in no way indicate acquiescence of Curry's actions.

Respondent's entire case rests on the testimony of a criminal, who confessed only when he was offered to plea to a lesser offense. The Respondent itself asserted, insisted in fact, for the jury to put faith in the words of the killer, Curry, whom it argued had no reason to lie. (Of course, Curry would have said anything the prosecution would like for him to say in exchange for a lighter sentencing, but that is beside the point).

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

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 only relevant evidence here is Appellant's presence at the scene of the incident. However, mere presence, absent mutual understanding or acts showing aid, abetment or assistance to an illegal act, is not

enough to convict a person of a crime. There is no direct or circumstantial evidence that supports a reasonable inference of Appellant's guilt.

III.

THE TRIAL COURT DENIED APPELLANT HIS SIXTH AMENDMENT RIGHTS AND DUE PROCESS RIGHTS.

On the denial of Appellant's right to present witnesses that would exculpate him

Appellant insists that the recorded interview with Gambrell would have had the effect of exculpating the Appellant. Contrary to Respondent's assertion that interview established Appellant's complicity in the criminal scheme, Gambrell mostly talked about Curry, his instructions to Curry, how the latter took the gun from him and how the shooting was not intended. Gambrell did not mention that Appellant knew that the cocaine was stolen. The interviewer asked an all-inclusive question, which Gambrell responded in the positive. He did not single out Carver as having knowledge of the drugs. Gambrell corroborated Appellant's assertions that he was asked to drive Cameron because he had already taken him to his house.

It is noteworthy that Respondent cast doubts on the trustworthiness of Gambrell's statements, stating that he had incentive to lie (Respondent's Initial Brief, p. 19), and yet, anchored its entire case on Curry's confession, the criminal who was offered a lesser penalty to implicate more people to prosecute.

Appellant also avers that the refusal of the court to continue the trial to accommodate the two other defense witnesses denied him the opportunity to establish his innocence. Appellant asserts that he had no knowledge of the stolen item and surmised that the instruction to transport

Cameron back to Gambrell's was connected to the bike sale involving the witnesses. This was intended to corroborate his statements and established lack of malicious intent on his part.

Appellant reiterates that the request to recall Detective Marzolf was relevant because it corroborated Gambrell's assertion in his interview. The request to recall was not merely to impeach Curry, but to show that there is no unity of purpose, and that Curry acted independently. Appellant submits that the interest of justice would have been served had the above-mentioned witnesses been allowed to testify considering that Gambrell's testimony was stricken out of record. It is important that the facts are set straight because Appellant's life and liberty are at stake.

It should be noted that Respondent, in its Initial Brief, indicated that Appellant's counsel was in possession of Gambrell interview well before the trial. (Respondent's Initial Brief, p. 16.). Appellant takes exception to this due to the fact that the State furnished the Appellant a copy of the voluminous records of this case a week prior to the trial. When Appellant brought this to the trial court's attention, the judge only reminded the State to be more proactive in the future. Appellant believes that the trial judge should have been stricter in dealing with such matters, considering that it is a direct violation of Rule 5 SC Rules on Criminal Procedure and that Appellant's life and liberty are at stake.

The trial judge's action suggested an outcome or lack of neutrality.

Appellant submits that whether the cited statements were made in the presence of the jury or not, they all showed that the trial judge had pre-determined the "hand of one is hand of all" doctrine, despite (1) the Respondent not showing any proof of its "drug distribution" theory; and (2) not having heard other witnesses for the defense.

On the issue of video with missing two-hour

Respondent submitted the theory of kidnapping and robbery to establish a criminal scheme. However, other than Curry who confessed to shooting Cameron in self-defense, Respondent did not present any evidence of kidnapping/robbery. Curry, whose testimony should be given credence according to the Respondent, disclosed his intention (which happened to be Gambrell's instructions to him) as follows:

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

(Curry, Trial Tr. 366:1-7).

> *"Q. All right. What did you say at that point? What did you ask him? What did you tell him?*
> *A. That Milton wanted his drugs back or wanted him to pay for it.*
> *Q. Was there anything more to that?*
> *A. (Negative gesture).*
> *Q. Is that a "no"?*
> *A. Yes, sir."*

(Curry, Trial Tr. 394: 8-16).

In fact, when asked of Carver's participation, Curry confirmed Appellant's claim.

> *"Q. Why did Mr. Carver drive you there?*
> *A. Because I don't have a driver's license.*
> *Q. So Milton asked him t drive you because he had a drivers license and you did; right?*
> *A. He'd just told Carver—he's just took Steven home. So he know where Steven lived. I didn't.*
> *Q. Yes, sir. So that is why Mr. Carver was going?*
> *A. Yes, sir.*
> *Q. He was talking you there. He was driving back to get Mr. Cameron because Mr. Gambrell told him, 'Hey, you need to go get him.' Isn't that right?*

A. Yes, sir."

(Curry, Trial Tr. 385:16-25; 366:1-7).

There was nothing in Curry's testimony that can be interpreted to mean that he was to kidnap or rob the victim.

Furthermore, Appellant raised the issue of the video with a missing two-hour in reference to Respondent's drug distribution theory. Respondent posited that the Appellant and Curry conspired to rob or kidnap the victim, and yet it did not present any evidence of drugs, nor any acts of taking by the two. The two-hour gap in the video coincided with the statement of the victim's family member who told the police that someone came that morning and rolled the body checking his person for drugs or money and ransacked the house. Since the Respondent raised the issue of kidnapping/robbery, Appellant was entitled to all evidence that would disprove such allegation.

On the unbridled prosecutorial discretion

Appellant insists that Respondent abused its discretion by prosecuting him, whose only fault was to do car jobs for Gambrell. In its desire to get a conviction for murder, or perhaps to get Gambrell for his alleged drug-related activities, Respondent was willing to see an innocent man to jail. The State instituted the murder charge against Appellant, knowing it cannot convict Curry of same. Curry admitted to the shooting but invoked self-defense. Up to this time, Curry has not been sentenced. Gambrell's case is not even on the docket. Appellant is presently serving a sentence of 30 years for a crime that he did not commit. Appellant is serving a harsher penalty for a crime that Curry admitted doing. There is no greater injustice than what happened to Appellant.

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, has been subverted. In the interest of justice, Appellant appeals to this Court to right this egregious wrong.

On the issue of Gambrell taking the Fifth Amendment

Appellant maintains that the trial judge exerted overzealous efforts to make Gambrell invoke the Fifth. Gambrell's ever-changing decision (his counsel claimed he will invoke the fifth, only to waive, and invoked again after repeated warnings by the judge) raises a question on voluntariness of Gambrell's actions. 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.

CONCLUSION

For these reasons, as well as those addressed in his Initial Brief, Appellant respectfully requests that the lower court's judgment or orders be reversed, and this case be remanded for trial.

Respectfully submitted by:

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August 7, 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 Reply Brief of the Appellant 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, Chief Deputy Attorney General W. Jeffrey Young, Deputy Attorney General Donald J. Zelenka, Sr. Asst. Deputy Attorney General Melody J. Brown 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 August 7, 2019.

August 7, 2019

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FORM 8
LETTER TO THE COURT OF APPEALS CLERK OF COURT
FILING REPLY BRIEF OF APPELLANT

August 7, 2019

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

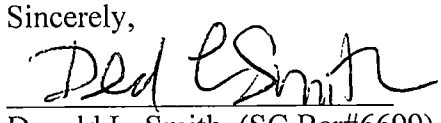
RE: The State v. Jason Franklin Carver
Case No.: 2016A05324
Appellate Case No.: 2017-002011

Dear Ms. Kitchings:

Please find enclosed the following materials for filing:

(1) Reply Brief of the Appellant; and,
(2) Proof of Service for the same.

Sincerely,



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Mr. Donald J. Zelenka, Deputy Attorney General
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Mr. Samuel M. Bailey, Asst. Attorney General
Ms. Chelsey Hucker, Assistant Solicitor for the Tenth Judicial Circuit

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