STATE OF SOUTH CAROLINA
In the Court of Appeals

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Appeal from Spartanburg County
The Honorable J. Mark Hayes, II, Circuit Court Judge

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THE STATE,

Respondent,

v.

ADRIEL NICHOLAS GARNETT,

Appellant.

Appellate Case No. 2019-000722

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# FINAL BRIEF OF RESPONDENT

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## APPELLANT'S QUESTIONS PRESENTED

I. Whether the circuit court erred as a matter of law by denying Appellant's motion for immunity pursuant to the protection of persons and property act (stand your ground) because there was ample evidence to support the statutory elements and case law requirements of self-defense?

II. Whether the circuit court erred in denying Appellant's motion for directed verdict at the close of the State's case in chief due to reliance on improper case law?

## STATEMENT OF THE CASE

On February 6, 2016, Appellant Adriel N. Garnett ("Garnett") murdered Cecil Gilliam in Spartanburg County. A warrant for murder was issued the same day. Garnett fled Spartanburg County and was not arrested until several months later on July 17, 2016 in Columbia, S.C. He was subsequently indicted by the Spartanburg County Grand Jury in a 2 count indictment for Cecil Gilliam's murder and possession of a weapon during a violent crime. (Ind. # 2016-GS-42-4430, Counts 1 & 2). Prior to the trial of the case, on December 6-7, 2017, the Honorable J. Mark Hayes, Circuit Court Judge, heard testimony and evidence and Garnett's motion for immunity pursuant to Section C of the Protection of Persons and Property Act. This motion was denied by Judge Hayes by written Order issued December 18, 2017. (Order, 12/18/17). Garnett then proceeded to a jury trial October 29 - November 1, 2018. During a pretrial hearing, Garnett renewed his motion for immunity. After presentation of further evidence and testimony on this issue, Judge Hayes maintained his ruling denying immunity. (R. p. 131). The trial began with presentation of evidence from both the State and Garnett. At the conclusion of the trial, the jury found Garnett guilty of murder and the weapon charge. Judge Hayes sentenced Garnett to life imprisonment and a concurrent sentence on the gun charge. (R. pp. 816-818; 837-838).[1] Garnett made motion for a new trial, which was denied April 22, 2019. (Order, 4/22/19). Garnett now directly appeals his convictions and sentences, raising 2 issues. This is the Brief of Respondent.

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[1] At sentencing, Garnett's prior criminal record was provided to the court. Garnett had previously been convicted of resisting arrest with an assault in 2015; distribution of marijuana in 2014, assault of a high and aggravated nature (AHAN) in 2009, providing false information to police (2 counts) in 2016 and 2014, possession of crack cocaine in 2014, possession of marijuana in 2015, criminal domestic violence (CDV) in 2012; possession of marijuana in 2006; and, resisting arrest, public disorderly, and failing to follow police commands in 2016. Garnett, a convicted felon, was on probation at the time of this murder and was prohibited from carrying a firearm. (R. pp. 822-823; See also R. pp. 653-660 [colloquy before Appellant testified regarding his prior record; R. December 6-7, 2017, p. 133 [stand your ground hearing]).

## RESPONDENT'S STATEMENT OF THE FACTS

### *The State's Evidence*

On February 6, 2016, Appellant Adriel Garnett ("Garnett") murdered Cecil Gilliam ("the victim") in Woodruff, S.C., located in lower Spartanburg County. Garnett was from Goose Creek, S.C., near Charleston. The victim, who was 42 years old, was from Woodruff. The murder occurred on the victim's premises in Woodruff. The victim was shot multiple times with a firearm. Garnett fled to Charleston after the murder and was eventually arrested in Columbia, S.C. several months later, after he intentionally evaded arrest and gave police a false name when apprehended. (R. pp. 154-165; 166-186; 543-558; 537-542; 816-818).

*The victim's premises*

On the night of February 5th into the early morning hours of February 6, 2016, the victim was a hosting a birthday party for his aunt [his mother's sister-in-law] at a house located on Sharpe Street that the victim had purchased and converted into a recreational or social hall (hereinafter "the building" or "renovated house"). The building was formally a ranch style house that had been recently renovated and "a great room" added and attached to the back center of the home so that the home now resembled the shape of the capital letter "T", the great room being the bottom portion of the "T". The great room contained a pool table and a wide screen T.V. The original ranch portion of the house faces the street, and had also been renovated, walls taken out, and now contained 2 large rooms with card tables, a fireplace with gas logs, 2 bathrooms, and a kitchen containing a small window opening with a shelf, which functioned as a bar. The building is similar to a location one would rent for a wedding reception, rehearsal dinner, anniversary, birthday, or a graduation party. The building has hard wood floors, appears freshly painted, and is well lit inside and has security lights outside. The victim used the building as a

place for family "get togethers" or re-unions. There was a large group of people at the birthday party on February 5-6, 2016, including the victim's wife (Pamela Gilliam), the victim's mother, his father, other family members, and friends. The victim's wife testified even though the birthday party was for the family, anyone in the community was invited to come if they wished. The victim and his wife lived in a different residence located directly behind the renovated house but which fronted on a different street. (R. pp. 154-165; 166-186; 463-469; 543-558; State's Ex. 24 [crime scene diagram]; State's Ex. 25 [sketch of measurements]; State's Ex. 22 [body cam footage]; State's Ex. 23 [screen grab from body cam footage]).

If one is standing where the great room begins facing the back of the great room [i.e. standing in the center of the house facing the bottom of the "T"], on the left side of the great room are 2 French doors that open onto a ramp that is 7 feet wide and 12 feet long that slopes down to the ground. The pool table in the great room is near the French doors, with 1 end of the pool table being close to the French doors. The ramp runs parallel with the back left of the ranch portion of the house. This ramp has railings on both sides. The ramp ends approximately where the ranch portion of the house ends on the left. Directly across from the end of the ramp is a separate garage building, approximately 8-10 feet from the end of the ramp. The end of the ramp is perpendicular to the garage, the garage fronting the end of the driveway to the renovated house on its left. As a result, the back left corner of the ranch portion of the renovated house is just a few feet from the front of the garage and the end of the ramp. The driveway comes from Sharpe Street up to the garage on the left side of the ranch portion of the renovated house. (R. pp. 154-165; 166-186; 463-469; 543-558; State's Ex. 24 [crime scene diagram]; State's Ex. 25 [sketch of measurements]; State's Ex. 22 [body cam footage]; State's Ex. 23 [screen grab from body cam footage]).

*What Occurred Before the Murder*

There were approximately 15 people at the birthday party for the victim's aunt at the time of the victim's murder. The victim, his wife, and a friend James Dallison ("Dallison") were operating the bar out of the kitchen portion of the renovated house. It was late and the party was winding down and people were leaving. Appellant Garnett, accompanied by a friend, Tavis Jeter, decided to go to the party at the victim's premises. Even though Garnett was a convicted felon, and on probation, he was armed with a loaded 9mm pistol on his person. After arriving at the party, Garnett and Tavis and possibly a 3rd man, went to the bar and ordered drinks. According to the victim's wife and Dallison, there was a small disagreement between the victim and Garnett or 1 of Garnett's friends, or both, over whether Garnett and his friends should have to pay for alcoholic drinks. The victim stated to the men: "yes I charge my own kids." Garnett and the victim looked at each other and smiled and then Garnett smirked and walked away. Garnett then went into the great room and eventually out onto the victim's ramp with the friend he came with, Tavis Jeter, and possibly the 3rd person. (R. pp. 154-165; 166-186; 543-558; 463-469; State's Ex. 22 & 23).

The victim and his wife then began discussing who Garnett was. The victim stated to his wife: "you know some people would say that was my child", but the victim then said that Garnett was not his child. The victim's wife agreed and pulled up a picture of Garnett's father on her phone and showed it to the victim. The conversation eventually ended and the victim eventually sat down and played cards with his wife and some of the ladies in the front room. He then got up and walked into the great room toward the pool table. Both Dallison and the victim's wife testified the victim was not upset or angry about the conversation with Garnett and his associate

or associates. The victim's wife testified the victim was in a good mood and was laughing and having a good time. (R. pp. 154-165; 166-186; 543-558).

A friend and cousin of the victim, Ronald Higgins ("Higgins"), arrived at the party about 20 to 30 minutes before the victim's murder. He had just gotten off work. When he arrived, he saw a "nice" gray Chevrolet Camaro parked in the victim's driveway and took notice of it. When Higgins entered the renovated house, he spoke with the victim and Dallison briefly while they were behind the bar serving drinks. Higgins then saw Garnett with a person who he described as 1 of the Jeter twins [Tavis Jeter]. He saw Garnett and Tavis go out of the victim's great room through the double French doors onto the ramp outside. (R. 166-186; 463-469; State's Ex. 24 [crime scene diagram]; State's Ex. 25 [sketch of measurements]; State's Ex. 22 [body cam footage]; State's Ex. 23 [screen grab from body came footage]).

*The Murder of the Victim*

Higgins testified he and the victim were supposed to play billiards on the pool table in the great room.. In fact, the victim had told Higgins that they had the next game up on the pool table. While Higgins was waiting on the victim at the pool table to play the next game, he saw the victim come from the general direction of the bar area and walk by the pool table and go outside on the ramp with Garnett and the twin [Tavis]. Higgins testified when the victim walked by him, the victim did not appear to be upset or angry and the victim was not armed with anything in his hand, such as a knife. Higgins testified the victim stayed outside on the ramp for about 5 to 7 minutes talking to the men outside. Higgins looked out the French doors 2 or 3 times to see what

was taking the victim so long. The victim was just out there on the ramp talking.[2] Higgins did not see or hear any arguing or fighting on the ramp. The last time Higgins saw the victim, the victim was standing on his ramp leaning on the railing with his forearms looking toward the victim's residence, which is behind the renovated house, talking to someone on his ramp. Garnett and the twin [Tavis] were out there with the victim. (R. pp. 166-186; 154-165; 463-469; State's Ex. 24 [crime scene diagram]; State's Ex. 25 [sketch of measurements]; State's Ex. 22 [body cam footage]; State's Ex. 23 [Screen grab from body cam footage]).

Higgins got tired of waiting on the victim and agreed to play another person in billiards. Higgins testified he was about to break the rack of billiard balls with the other person when he heard what he described as 3 gunshots. Higgins immediately looked out the same French doors and saw Garnett standing on the ground next to the back left corner of the ranch portion of the renovated house shooting a hand gun down at the ground and saw and heard Garnett fire a 4th gunshot. Garnett was shooting at the ground near the end of the ramp. Tavis Jeter was standing behind Garnett. Higgins could not see the victim. Higgins initially thought Garnett, a young man, was showing off or "shooting off some steam." Higgins did not realize Garnett was shooting another human being. Higgins turned back to the pool table, waited for a few seconds, then decided as a precaution to go outside and check on the victim because gunshots were being fired. When he did, he went out the French doors and down the ramp and found the victim on the ground at the foot of the ramp, between the bottom of the ramp and the separate garage

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[2] While the French doors contain blinds on them, Deputy Joshua Hollifield testified when he responded to the 911 call and arrived on the scene shortly after the murder, the blinds on the French doors were open and you could see family and friends looking out the French doors at the victim body at the bottom of the ramp. As a result, Hollifield walked up the ramp and closed the blinds. This is all reflected in Hollifield's body cam video and a still photograph taken from the body cam video. (R. pp. 463-469; State's Ex. 22 [Body cam video] & State's Ex. 23 [still grab from body cam video]).

building. By the time Higgins reached the victim, someone else had already turned the victim over on his back and put a towel under his head. The victim breathed 2 or 3 times and then died. (R. pp. 166-186; 463-469; 154-165; State's Ex. 24 [crime scene diagram]; State's Ex. 25 [sketch of measurements]; State's Ex. 22 [body cam footage]; State's Ex. 23 [screen grab from body cam footage]).

James Dallison, who had been operating the bar with the victim, was the first person to actually reach or find the victim. When he heard the gunshots, Dallison went out the French doors and found the victim at the bottom of the ramp lying face down. The victim's feet were near the right bottom of the ramp if standing at the French doors and looking down toward the bottom of the ramp. The victim's body was somewhat parallel with the garage building with his head toward the rear of the garage and his feet toward the driveway, but not on the driveway. Dallison turned the victim over by rolling him over toward the garage and onto his back. Dallison told someone to put something under the victim's head, and a woman put a towel under the victim's head. The victim expired within seconds. (R. pp. 154-165; State's Ex. 24 [crime scene diagram]; State's Ex. 25 [sketch of measurements]; State's Ex. 22 [body cam footage]).

By the time Ronald Higgins got to the bottom of the ramp and saw the victim, Garnett and his friend [Tavis] were gone. So was the car they came in, the "nice" gray Camaro. (R. pp. 166-186; 463-469; State's Ex. 24 [crime scene diagram]; State's Ex. 22 [body cam footage]).

As stated, the victim had collapsed on his front side between the ramp and the separate garage building. His head was toward the back of the garage. His feet were toward his driveway. Found near and around the victim's body were 8 fired 9mm shell casings. Some of the casings went back to near the corner of the original ranch portion of the house. The autopsy determined the victim had been shot 7 times. The victim was shot 2 times in *his* left side, once

just below the rib cage and once near his left hip. Both shots traversed the victim's stomach in the front of his body and came out his right side, 1 just below his right nipple and the other near his right hip. One (1) of these bullets, tumbling, re-entered his right wrist and came to rest in his right hand. The other bullet came out the right side of the victim's body. These 2 gunshots to the left side were consistent with having occurred when the victim was standing and leaning over the railing talking to the men outside, as described by Higgins. The remaining 5 gunshot wounds were to the victim's back or back side. One (1) of these gunshot wounds entered the victim's left back area and traveled downward and stopped in the victim's right buttocks area. This shot was consistent with the victim having been shot again after he was shot in the side and had turned and bent over or staggered down the ramp bent over at some point. The remaining 4 shots to the victim's back or back side traveled upward and these shots were consistent with the victim having been shot while leaning over the railing *or* when he was face down on the ground at the foot of the ramp, as described by Higgins when he testified he saw Garnett standing at the corner of the house shooting down at the ground. Blood spatter was found on the outside frame of the French doors near where the victim had been seen by Higgins leaning over the railing before the shooting started. There were bullet strikes to the house to the left of the French doors if standing on the ramp and facing the outside wall of the great room. There was also a bullet strike to 1 of the pickets supporting the ramp railing the victim had been leaning over. And, blood spatter and smears were found down the railing and ramp and even on the separate garage wall. At the foot of the separate garage wall, police found an open pocket knife with a 2 inch blade that contained blood and the victim's DNA on the blade and handle. A fired bullet or projectile was also found next to the same garage wall. There was no gun anywhere around the victim or the crime scene. (R. pp. 154-165; 166-186; 419-524; 561-614; State's Ex. 24 [crime scene diagram]; State's Ex.

25 [sketch of measurements]; State's Ex. 22 [body cam footage]; State's Ex. 26 & 27 [Dr. Wren's diagrams]).

After murdering the victim, Garnett fled to his aunt's home in Woodruff with the murder weapon. He dropped Tavis Jeter off somewhere on the way. Garnett had borrowed the car earlier in the night from his aunt to go to the store. After the murder, Garnett awakened his aunt and told his aunt he had shot Cecil Gilliam [the victim], but claimed it was self-defense, and then asked his aunt to drive him to Columbia, S.C. She refused. Garnett offered her $100 to drive him to Columbia, S.C. She again refused. Garnett left her home for some period of time and returned. Garnett also told his grandfather he had shot the victim but again claimed it was self-defense. Both Garnett's aunt and grandfather told him if he truly acted in self-defense he should turn himself in. Garnett did not turn himself in. Instead, Garnett fled his aunt's home on foot and had a friend or acquaintance pick him up in his car. He then fled Woodruff and Spartanburg County and was not arrested until months later. (R. pp. 154-165; 166-186; 187-205; 537-542).

Everyone cooperated with police except Garnett. Garnett's aunt gave a statement to police. Mr. Higgins gave a statement. The victim's wife also informed police of Garnett's identity and what occurred before the shooting. A warrant for Garnett's arrest for murder was issued the same day as the victim's death, February 6, 2016. The aunt's Camaro was searched but the murder weapon was never located. (R. pp. 463-469; 471-474; 506; 419-424; 166-186; 187-418; 543-58; State's Ex. 24 [crime scene diagram]; State's Ex. 76-81 [photos of Camaro]).

On July 17, 2016, Columbia S.C. police were called to an incident at a bar in the Vista area of Columbia. Once there, they encountered Garnett, who provided them with a false identity. They arrested Garnett for the incident at the bar and he resisted arrest and tried to escape. They eventually had to use a Taser to subdue Garnett. Garnett's fingerprints were

checked and it was determined he was Adriel Garnett, who was wanted for the murder of the victim in Spartanburg. Garnett had intentionally hid out in Columbia with friends for several months to avoid his arrest for the murder. (R. pp. 537-542).

***The Defense Case or Evidence***

Garnett took the stand and testified he shot at the victim all 8 times. Garnett claimed that he and the victim had a short verbal disagreement at the bar, but it amounted to nothing. He was not angry or upset that the victim wanted to charge him for an alcoholic drink. He testified he and Tavis Geter went outside on the ramp and were talking about marijuana when the victim came out of the French doors immediately armed with a pocket knife. The victim threatened to "gut him like a fish." Garnett stated that he put his hands up in the air and started backing down the ramp. As he did, the victim was saying ugly things about Garnett and his mother. Garnett said as he backed down the ramp, the victim kept coming and he was afraid for his life and eventually drew his loaded weapon and shot the victim. Garnett testified the victim was coming at him straight on, when he initially shot him. Garnett stated the victim fell or stumbled onto the ground at the bottom of the ramp and he, Garnett, continued to shoot the victim until he ran out of bullets. Garnett claimed he was still afraid of the victim, i.e. the victim might be getting up off the ground. Garnett stated that he and Tavis then left in his aunt's Camaro. Garnett admitted when he got to his aunt's house he woke her up and asked her to drive him to Columbia, S.C., because he was scared. He admitted he offered his aunt $100 to drive him to Columbia. He admitted he left his aunt's house for about 20 minutes and during that time he got rid of the murder weapon by throwing it in some woods approximately 100 yards from his grandfather's house. He admitted he did not turn himself in to police, but when he returned to his aunt's house, he called a friend and the friend picked him up nearby in a car and drove him to

Charleston. He admitted he eventually went to Columbia, S.C. and hid out with friends until he was arrested. He admitted he gave a false name when arrested in Columbia, but police eventually learned he was wanted for murder in Spartanburg. (R. pp. 668-727).

Garnett also called the SLED toxicologist who testified the victim's blood alcohol was .18. The toxicologist testified this amount of alcohol could cause the victim to become more aggressive and lower his inhibitions. The toxicologist also testified this amount of alcohol could also slow the victim's reactions and make him more docile. It depended on each particular person how they react to the consumption and influence of alcohol. (R. pp. 738-745).

Garnett also called 2 police officers who worked on the case in an attempt to establish that police treated the case as a murder almost immediately rather than a homicide, i.e. they rushed to judgment on the case. However, this testimony established police first located Tavis Jeter shortly after the murder, interviewed him, and obtained a written statement from him and relied in part on that statement in obtaining the arrest warrant for murder against Garnett. Police also interviewed Garnett's aunt and grandfather before obtaining the arrest warrant and discovered Garnett had admitted to them that he shot and killed the victim. And, police had also worked the crime scene, seen the victim's injuries, and interviewed individuals there including Ronald Higgins before obtaining the arrest warrant on Garnett for murder. Finally, police had obtained a search warrant for Garnett's cell phone because he had fled the area after the murder. (R. pp. 625-648).

Appellant's Issue I.

Whether the circuit court erred as a matter of law by denying Appellant's motion for immunity pursuant to the protection of persons and property act because there was ample evidence to support the statutory elements and case law requirements of self-defense?

*What Occurred Below*

Prior to the trial, on December 6-7, 2017, Judge Hayes conducted a hearing pursuant to State v. Manning, 418 S.C. 38, 791 S.E.2d 148 (2016), and heard testimony and evidence and Garnett's motion for immunity pursuant to Subsection C of the Protection of Persons and Property Act, codified at S.C. Code Ann. Section 16-11-410, *et seq.* [3] (R. December 6-7, 2017, 1-424). At the hearing, the following witnesses were called to testify: the S.L.E.D. toxicologist who analyzed the victim's blood, an EMS first responder, 2 crime scene investigators, the pathologist, a deputy coroner, Garnett's aunt, Garnett's grandfather, and Garnett. (R. December 6-7, 2017, pp. 11-168). Exhibits were also introduced. The State introduced 23 photographs, the autopsy report, and a crime scene diagram. (R. December 6-7, 2017, pp. 4-5; State's Ex. 1-25). Garnett introduced 1 photograph and the Coroner's report. (R. December 6-7, 2017, pp. 5-6, Defendant's Ex. 1-2).

*The Evidence at the Pre-trial Hearing*

The evidence introduced at the hearing was basically consistent with that recited in Respondent's Statement of Facts. Ronald Higgins testified that on the night in question he was waiting to play pool with the victim when the victim went out the French doors onto the ramp. The victim stayed outside talking with Garnett and Tavis Jeter for several minutes. Higgins

[3] Garnett conceded below that because he was on the victim's premises subsection (A) of S.C. Code Ann. Section 16-11-440 has no application here. *See* State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013)(the presumption of subsection (A) does not apply if the victim has an equal right to be in the dwelling or residence); State v. Manning, 418 S.C. 38, 791 S.E.2d 148 (2016)(similar).

testified the blinds on the French doors were open and he looked out the French doors several times and saw the victim on the ramp talking to the men outside. The last time Higgins looked out the doors the victim was standing on the ramp leaning on the railing looking toward his residence while talking to the men. Higgins was about to break the rack of billiard balls when he heard 3 gunshots outside. He immediately turned and looked out the French doors and Garnett was standing on the ground near the corner of the ranch portion of the house shooting a gun at the ground at the bottom of the ramp, a 4th shot. Higgins thought Garnett was playing, because he could not see the victim, and he turned back to the pool table and then decided to check on the victim. When he went out the French doors he found the victim at the bottom of the ramp shot and Garnett and Tavis were gone. (R. December 6-7, 2017, pp. 87-110).

Garnett's aunt and grandfather testified Garnett came to their home in the early morning hours after the victim was shot. Garnett stated he shot the victim, but claimed it was in self-defense. Garnett wanted his aunt to drive him to Columbia and even offered her money to do so. She refused. They told Garnett to turn himself in, but Garnett refused. Garnett left the aunt's home for a short while, then returned, and left again on foot talking on his cell phone. He never returned because he fled the area and they did not talk to Garnett again until he was arrested months later. Garnett's aunt was the one who called the police to her home. (R. December 6-7, 2017, pp. 113-131).

The crime scene technicians, the deputy coroner, and the first responder explained all of the fired shell casings found at the scene, 8 total, were located near the left side of the ranch portion of the house and going toward and around the victim's body. There were no shell casings found on the ramp. A fired bullet and a small pocket knife with a 2 inch blade were found next to the garage wall. There was blood on the knife. There was blood spatter on the

outside of the French doors and there was blood spatter down the ramp to where the victim collapsed. There was blood on the garage wall. There was also a bullet strike to the 4th railing on the ramp down from the French doors. (R. December 6-7, 2017, pp. 23-53; 76-79; 18-21; 80-86).

The pathologist, Dr. Wren, testified the victim had 2 entrance gunshot wounds to his left side that went across his abdomen and exited his right side, 1 down below the right nipple and 1 near his right hip. One (1) of these bullets went into the victim's right wrist and came to rest in his hand. The victim also had 5 gunshot wounds to his backside. Four (4) of these gunshot wounds traveled upward in the victim's body indicating he was either bent over when shot from behind or lying on the ground face down when shot from behind. The 1 other shot to the back traveled downward. The gunshot wound to the center of the back just above the buttocks, which traveled upward, was the immediately fatal wound. (R. December 6-7, 2017, pp. 54-75).

Garnett testified that on the night in question he came to the victim's premises with Travis **not** Tavis Jeter. Throughout his testimony he maintained it was Travis Jeter not Tavis who was with him and witnessed the shooting. Garnett admitted he was a convicted felon on probation and could not possess a firearm, but he was carrying a loaded pistol anyway. Garnett admitted there was a small altercation or disagreement with the victim at the bar over whether Garnett should have to pay for an alcoholic beverage. Garnett testified he and Travis went out on the ramp and talked with a third person. Garnett testified the victim came out the double doors with a knife in his hand and threatened to "gut him like a fish." Garnett claimed he raised his hands in the air and started backing down the ramp. Garnett claimed the victim kept coming at him and because he was in fear for his safety he pulled his firearm and shot the victim multiple times. He admitted he shot or shot at the victim 8 times. He then admitted he and Travis fled in

his aunt's Camaro and he took Travis home. Garnett admitted he woke his aunt, told her he had shot the victim and why, and asked his aunt to drive him to Columbia, even offering her money to do so. She refused and called the police. He admitted he left her house on foot and disposed of the murder weapon behind his grandfather's house in some woods. He returned to his aunt's home and then decided to leave on foot. He called a friend and the friend picked him up and drove him to Columbia. He hid out there for several days. He then fled to Charleston. He eventually ended up back in Columbia. He admitted he knew there was a warrant out for his arrest for murder and he was eventually apprehended in Columbia. (R. pp. 132-168).

The toxicologist testified the sample of the victim's blood he originally tested was degraded but the victim did have alcohol in his blood stream. (R. pp. 11-16).

Garnett did not call Tavis **or** Travis Jeter as a witness at the "stand your ground" hearing. (R. December 6-7, 2017, pp. 1-211). There is no question that Tavis Jeter did not die until several months after that hearing. (R. December 6-7, 2017, p. 1). There was no evidence presented at the hearing that Travis Jeter was deceased. (R. December 6-7, 2017, pp. 1-211).

*Judge Hayes' Ruling*

After hearing all the testimony and reviewing the evidence, Judge Hayes denied the motion for immunity by a written Order issued December 18, 2017. (Order, 12/18/17). Judge Hayes found Garnett's testimony was not credible; there was evidence the victim was not the aggressor; Garnett had failed to call an available eyewitness, Tavis Jeter, even though he had the burden of proof; and, as a result of all of these factors, Garnett had failed to meet his burden of proof. (Order, 12/18/2017). Garnett then proceeded to a jury trial October 29 - November 1, 2018. (R. p. 1). During a pretrial hearing, Garnett renewed his motion for immunity. After presentation of further evidence and testimony on this issue, Judge Hayes maintained his ruling

denying immunity. (R. pp. 279, 282-87; 290-326; 344).[4] The trial then began with presentation of evidence from both the State and Garnett. At the conclusion of the trial, the jury found Garnett guilty of murder and the weapon charge beyond a reasonable doubt. (R. pp. 816-818).

## ARGUMENT I.

**Judge Hayes did not abuse his discretion in denying the motion for immunity because he found Garnett's testimony was not credible; he properly found Garnett had failed to meet his burden of proof on the issue; and, there was evidence Garnett murdered the victim and did not act in self-defense.**

Garnett argues Judge Hayes erred in declining to find he was entitled to immunity under S.C. Code Ann. Section 16-11-440 (C) because based on his testimony and other evidence there was evidence of self-defense. Garnett's assertion that Judge Hayes erred is wrong.

### *Standard of Review*

A claim of immunity under the act requires a pre-trial determination using a preponderance of the evidence standard, which this Court reviews under an abuse of discretion standard. State v. Jones, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016)(quoting State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013)). An abuse of discretion occurs when a circuit court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. Id. "In other words, the abuse of discretion standard of review does not allow this Court to reweigh the evidence or second guess the [circuit] court's assessment of witness' credibility. State v. Oates, 421 S.C. 1, 13, 803 S.E.2d 911, 918 (Ct. App. 2017); State v. Douglas, 411 S.C. 307, 316, 768 S.E.2d 232, 237-38 (Ct. App. 2014).

[4] The evidence presented outside the jury's presence that was not presented at the original "stand your ground" hearing was evidence that was unavailable at that time, the victim's blood alcohol results from a 2nd vial of blood and the DNA from the crime scene. (R. 279, 282-287; 290-326). It did not change Judge Hayes' denial of immunity to Garnett.

*Law / Analysis*

"[T]he General Assembly did not intend," to require the circuit court "to accept the accused's version of the underlying facts" in determining a motion for immunity under the Act. Oates, 421 S.C. at 13, 803 S.E.2d at 918; Curry, 406 S.C. at 372, 752 S.E.2d at 266. In accordance with South Carolina Supreme Court' and Court of Appeals' jurisprudence, the burden of proof of establishing entitlement to immunity under the Act rests upon the party asserting the right to immunity, the defendant, and the burden of proof is by a preponderance or greater weight of the evidence. Curry, 406 S.C. 364, 752 S.E.2d 263; State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011). This same jurisprudence makes the trial court, not the jury, the finder of facts of when the burden of proof has been met for the entitlement of immunity from prosecution under the Act. State v. Marin, 404 S.C. 615, 745 S.E.2d 148 (Ct. App. 2013), *affirmed as modified on other grounds*, 415 S.C. 475, 783 S.E.2d 808 (2016)(S.C. Code Ann. Section 16-11-440(A), does not contain any substantive provisions of law to be charged to the jury, but rather, it is a procedural subsection under which the circuit court may grant immunity from prosecution before a trial begins if the court finds the defendant acted lawfully in self-defense). Unlike the constitutional right that a defendant is presumed innocent until the government has established a defendant's guilt beyond a reasonable doubt, the Act does not provide a presumption of immunity. But rather, a defendant must establish his entitlement to immunity by proof of the greater weight of the evidence. Curry, *supra*; Duncan, 392 S.C. 404, 709 S.E.2d 662. Preponderance of the evidence is evidence which, as a whole, shows that the fact sought to be proved is more likely true than not true. *See Blacks Law Dictionary* 1064 (5th Ed. 1979). If after considering all of the evidence presented, the weight of the evidence remains even or if it tips even or so slightly in favor of the government, then the defendant has failed to

meet his burden of proof and is not entitled to immunity under the Act. Curry, *supra*; Duncan, *supra*.

As the fact finder, necessarily, the trial court [Judge Hayes] must determine the credibility of the witnesses who have testified at an immunity hearing under the Act, including the defendant. The abuse of discretion standard does not allow an appellate court to reweigh the evidence or second-guess the circuit judge's assessment of a witness' credibility. State v. Douglas, 411 S.C.307, 316, 768 S.E.2d 232, 238 (Ct. App. 2014), *cert. dismissed as improvidently granted*, 416 S.C. 627, 788 S.E.2d 686 (2016). Credibility simply means believability.

Judge Hayes found that here, "Garnett's flight from the scene and evasion of police after the shooting substantially effected his credibility." This finding is fully supported by the record. (Tr. December 6-7, 2017, pp. 155-158; 160-161; 113-131). Under South Carolina law, flight is evidence of guilt. State v. Beckham, 334 S.C. 302, 315, 513 S.E.2d 606 (1999)("Evidence of flight has been held to constitute evidence of guilty knowledge and intent."); State v. Thompson, 278 S.C. 1, 292 S.E.2d 581(1982)(evidence of flight shows guilty knowledge, intent, and that defendant sought to avoid apprehension) *overruled on other grounds by* State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991); State v. Ballenger, 322 S.C. 196, 200, 470 S.E.2d 851, 854 (1996)(flight is some evidence of guilt); State v. Walker, 366 S.C. 643, 654-55, 623 S.E.2d 122, 127-28 (Ct. App. 2005)(Flight from prosecution is evidence of guilt.); State v. Crawford, 362 S.C. 627, 608 S.E.2d 886 (Ct. App. 2005); State v. Byers, 277 S.C. 176, 177-178, 284 S.E.2d 360, 361 (1981); State v. Grant, 275 S.C. 404, 407, 272 S.E.2d 169, 171(1980)(attempts to run away have always been regarded as some evidence of guilty knowledge and intent); State v. Al-Amin, 353 S.C. 405, 413, 578 S.C. 32, 36-37 (Ct. App. 2003)(flight from prosecution is evidence

of guilt to be considered at the directed verdict stage), *overruled on other grounds* State v. Broadnax, 414 S.C. 468, 779 S.E.2d 789 (2015). Garnett admitted he fled Woodruff after the murder, and hid in both Charleston and Columbia aware that a warrant was outstanding for his arrest. (R. 368-371; 373-374).

Further, at the pre-trial hearing, Garnett testified that after he fled the scene and went to his aunt's home, he left there for approximately 20 minutes and got rid of the murder weapon in some woods behind his grandfather's house. (R. December 6-7, 2017, pp. 159-160). The destruction or attempted destruction of evidence is evidence of guilt. "The attempted destruction of evidence is regarded as a relevant incriminating circumstance." Beckham, 334 S.C. 302, 513 S.E.2d 606 (referencing State v. Epes, 209 S.C. 246, 39 S.E.2d 769 (1946)); Al-Amin, 353 S.C. 405, 578 S.C. 32 (Ct. App. 2003)(the attempted destruction or concealment of evidence is relevant incriminating evidence), *overruled on other grounds* Broadnax, 414 S.C. 468, 779 S.E.2d 789; State v. Wells, 162 S.C. 509, 161 S.E. 177 (1931)(similar).

And, both direct and circumstantial evidence presented at the pre-trial hearing directly contradicted Garnett's version of events. Garnett claimed at the pre-trial hearing that the victim immediately came out of the French doors onto the ramp holding a knife and threatening him and saying derogatory things about Garnett and his mother. This is not what Ronald Higgins testified to.

Higgins testified he saw the victim walk out the French doors and onto the ramp. The victim was not angry or upset. The victim was not carrying a knife. The victim was not yelling or cursing anyone as he went out the French doors. The victim stood on the ramp right outside the French doors talking to the men outside for 5-7 minutes. Each time Higgins looked outside through the French doors, the victim was talking to the men outside on the ramp. The last time

Higgins looked outside, he saw the victim standing on the ramp leaning on the railing with his forearms and looking toward his residence, which was located directly behind the ramp, and talking to whoever was outside. Higgins did not see or hear any arguing. It was only shortly after that, that Higgins then heard 3 gunshots. Higgins immediately looked out the French doors and saw Garnett standing on the ground at the corner of the former ranch portion of the renovated house, shooting another shot down at the ground with a pistol. Higgins did not realize it at the time, but Garnett was shooting the victim while the victim was on the ground lying face down at the bottom of the ramp. The physical evidence was consistent with Higgins' testimony, including bullet strikes to the outside great room wall to the left of the ramp and blood spatter on the outside of the French doors. This evidence was consistent with the victim being shot while leaning over the railing and Garnett shooting the victim while Garnett stood near the corner of the house. The disposition of shell casings is also consistent with the victim being shot while Garnett was near the corner of the house not on the ramp with the victim. All of the fired shell casings were found from the corner of the house to around the victim's body. The pathologist also testified the gunshot wounds to the victim were intermediate or distant, not close or contact wounds, which is consistent with Higgins' testimony. The physical evidence, including blood drops and smears, showed the victim staggered down the ramp while leaning on the railing and eventually collapsed at the bottom of the ramp, face down, where Garnett shot him several more times in the back. Douglas, 411 S.C.307, 316, 768 S.E.2d 232, 238 (The abuse of discretion standard does not allow an appellate court to reweigh the evidence or second-guess the circuit judge's assessment of a witness' credibility.), *cert. dismissed as improvidently granted*, 416 S.C. 627, 788 S.E.2d 686.

Judge Hayes also found that while there was some evidence that the victim *may* have been the aggressor with a knife, the evidence was insufficient for the Court to conclude that it was more likely true than not that the victim was the aggressor. (Order). This finding is fully supported by the record.

While Garnett claimed the victim immediately came out of the French doors with a knife threatening to "gut him like a fish" and cursing him and his mother, and a pocket knife with a 2 inch blade was found at the base of the garage wall containing the victim's blood and DNA, only Garnett testified the victim immediately came out of the French doors armed with a pocket knife threatening and cursing Garnett. Judge Hayes found this testimony was not credible based on Garnett's flight from the scene and Garnett's failure to call an available witness, Tavis Jeter, at the hearing, who was present outside during the shooting, when Garnett had the burden of proof. Further, as stated above, Higgins testified the victim walked out of the French doors and was not angry or armed with any type of weapon. Higgins did not hear or see the victim cursing or threatening anyone as he went out the French doors. Instead, Higgins testified the victim stood on the ramp talking to the men outside for 5-7 minutes. Higgins looked out the French doors several times and saw the victim outside talking to the men. Higgins did not hear or see any arguing or cursing outside the French doors. The last time Higgins looked out the French doors, to see what was taking the victim so long, the victim was still standing on the ramp talking to the men outside while leaning on the ramp railing with his forearms, looking toward his own residence located directly behind the renovated house. It was only after all this had occurred, that Higgins heard 3 gunshots and then turned and looked out the French doors again and saw Garnett standing on the ground at the corner of the house shooting a gun down at the ground again [a 4$^{th}$ gunshot].

The pathologist testified the injuries to the victim were not "straight on" gunshots as Garnett claimed in his testimony, but 2 were from the left side into the area near or above the left hip, traveled across the victim's front, and exited the victim's right side, 1 in the area below the right nipple and 1 at the right hip. The remainder of the gunshot wounds were to the victim's back side or flank. The physical evidence at the scene corroborated Higgins' version of events not Garnett's. There were bullet strikes to the outside wall of the great room to the left of the French doors. There were also blood spatters on the outside of the French doors. There was also evidence the victim staggered down the ramp bleeding while holding onto the railing of the ramp and collapsed at the bottom of the ramp face down on the ground. The pathologist testified the gunshot wounds were intermediate or distant gunshot wounds and were not close or contact wounds. Several of the wounds to the victim's back [4], and their path of travel, were consistent with having been fired by Garnett while the victim was leaning over the railing or helpless on the ground on his stomach and Garnett was behind the victim near the corner of the renovated house or walking toward the victim as he fired. The 1 other wound to the victim's back was consistent with the victim having been shot at the top of the ramp bent over forward, or in the same or similar position as he staggered down the ramp or when he reached the bottom of the ramp before collapsing. While a pocket knife, with a 2 inch blade, was found at the base of the garage wall, there was no credible evidence of when it was introduced into the events that occurred outside the house. If the pocket knife did belong to the victim, he could have armed himself with it in self-defense when he was initially shot by Garnett. He also could have armed himself with it in self-defense as he staggered down the ramp after being shot and while Garnett continued to shoot him. It is also possible the knife was there before the shooting occurred and the victim's

blood and DNA was dropped onto it, or Garnett, Tavis, or someone else placed or dropped it there after the fact, in a location where the victim's blood and DNA had already been deposited.

Judge Hayes also found that the failure to call the eyewitness, Tavis Jeter, who was alive at the time of the "stand your ground" hearing, December 6-7, 2017, or explain to the Court why the witness was not called to testify, created the inference that the witness's testimony would have been adverse to Garnett's version of events. Judge Hayes' finding in this regard was appropriate. Jeter did not die until long after the stand your ground hearing and several months before the actual trial. Jeter was Garnett's friend who accompanied him to the party. He was outside with Garnett and witnessed the entire incident. Jeter also provided police with a written statement in the early morning hours after the shooting, which was part of the basis for the issuance of the arrest warrant for murder. However, Garnett failed to call him as a witness at the pre-trial hearing even though Garnett had the burden of proof to prove that he was entitled to immunity. (R. December 6-7, 2017 pp. 1-211).

Finally, Garnett was impeached with his prior criminal record which included convictions for providing false information to the police, drugs, and aggravated assault. (R. December 6-7, 2017, pp. 158-159). There were plenty of reasons for Judge Hayes to find Garnett's version of events was simply not credible.

Based on Judge Hayes' "view of the evidence as a whole," Judge Hayes appropriately found and concluded that Garnett "had failed to meet his burden of proof for showing that he is entitled to immunity from prosecution under the Act." (Order). Given all the evidence presented at the hearing, the motion was properly denied. Based on this record, Judge Hayes did not abuse his discretion in denying the motion for immunity. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013)(where the facts, as presented by the defense, were that the defendant and victim had been

in an altercation on New Year's Eve, that the altercation ended, and the defendant went upstairs and returned with a pistol to fire at midnight, however, the victim was lunging toward defendant, so defendant shot the unarmed victim 6 times in the back- the trial judge did not err in finding that defendant had not established self-defense by a preponderance of the evidence; the case was properly submitted to the jury, with the claim of self-defense being fully charged) Oates, 421 S.C. 1, 803 S.E.2d 911 (affirming trial court's denial of immunity under the Act because witnesses testified, and a neighbor's security camera showed, that the victim had stepped away from the defendant, and had his back turned to defendant when the defendant exited his tow truck and fired his pistol, shooting the victim 6 times in his back or posterior area. The defendant was the only person to testify that the victim was in the processing of "drawing" his pistol when defendant fired his pistol).

Appellant's Issue II.

Whether the circuit court erred in denying the motion for directed verdict?

*What Occurred Below*

At the conclusion of the State's case, Garnett moved for directed verdict alleging the State had failed to prove the *corpus delicti* of the case. Garnett then argued that the State had not proven that he shot anyone. He argued witness Higgins only saw him shooting at the ground 1 time and that bullet possibly could not have hit anyone and been the one that was found at the base of the garage wall. He argued another person was outside with him at the time of the shooting, Tavis Jeter, and Tavis could have shot the victim. He also argued the State had failed to disprove self-defense and had failed to prove he committed a crime. He argued the State had to accept his statement to his aunt and grand-father that the shooting was in self-defense, since the State argued in an in chambers meeting with the court that the statement alone was not sufficient to obtain a jury charge on self-defense. But mainly, Garnett repeatedly argued the State had not proven that it was he, Garnett, who shot the victim. He admitted the victim was shot 8 times and died from gunshot wounds. (R. pp. 616-618; 620-623).

The State responded that Higgins saw Garnett shoot the gun from down on the ground; the last time Higgins saw the victim before Higgins heard the first 3 gunshots the victim was leaning over the ramp railing talking and looking toward his home; and, the bullet strikes and blood spatter to the house and French doors was consistent with the victim being shot in this position. Higgins also testified the victim was outside on the ramp talking for several minutes before there was any shooting. The other wounds to the victim were to the victim's back and consistent with being while he was down on the ground at the bottom of the ramp and in an upward angle consistent with being shot from behind by Garnett. There were no "straight on"

shots to the victim. Additionally, Garnett admitted to 2 family members that he shot the victim. While he claimed it was in self-defense, he fled the crime scene and the jurisdiction and that flight was evidence of guilt. And the blood spatter and smears on the ramp and railing were consistent with the victim being shot while leaning over the ramp railing talking and then staggering down the ramp, collapsing at the bottom, and being shot again by Garnett. The multiple shots with a gun, 8, 2 to the side and 5 to the back, [with a re-entry to the wrist] demonstrated malice. And, despite Garnett's self-serving statement to his aunt and grandfather after the shooting that the shooting was in self-defense, the eyewitness' testimony from the scene, the physical evidence, and Garnett's actions after the crime disproved self-defense. Further, Garnett stipulated pre-trial there was no third-party guilt defense in this case. Viewing the evidence and all inferences in the light most favorable to the State, there was ample evidence showing not only that the victim was murdered but that it was Garnett who murdered the victim. (R. pp. 618-620).

Judge Hayes, relying on State v. Oates, 421 S.C. 1, 803 S.E.2d 911 (Ct. App. 2017), which he had reviewed carefully before ruling on the motion, denied the motion for directed verdict finding that for the reasons set forth in the State's response to the directed verdict motion, viewing the evidence and all inferences in the light most favorable to the State, there was sufficient evidence to overcome the motion for a directed verdict and submit the case to the jury. (R. pp. 623-624).

Thereafter, Garnett did not rest on the denial of the directed verdict motion but presented evidence in his defense, including testifying in his own defense. (R. pp. 668-766). In his testimony, he admitted he shot at the victim 8 times with the loaded pistol he brought with him to the party. He admitted that it was he who shot the victim multiple times, including after the

victim fell to the ground at the foot of the ramp. He admitted Tavis did not shoot the victim. Garnett admitted he fired every bullet in the gun. He admitted he fled the crime scene with Tavis. Garnett admitted he disposed of the murder weapon, in some woods approximately 100 yards behind his grandfather's house, when he left his aunt's home for 20 minutes after returning her car to her. He admitted he tried to persuade his aunt to take him to Columbia, S.C. and even offered her money to do so but she refused. And, he admitted he fled from Spartanburg County, with the help of a friend, and remained on the run hiding from police until July 17, 2016 when he was arrested, whereupon he gave a false name to avoid arrest for this murder. (R. pp. 668-727).

Garnett also called the SLED toxicologist who testified the victim's 2nd vial of blood tested negative for any kind of drugs but the victim did have a .18 blood alcohol at the time he was shot. The pathologist explained this could cause the victim's inhibitions to have been lowered; however, he admitted each person reacts differently to alcohol and he could not opine how the alcohol affected the victim in this case. (R. pp. 738-745).

Garnett also called 2 police officers in an attempt to establish police made a rush to judgment in charging Garnett with murder the morning following the shooting and not simply characterizing the case as a homicide until all the evidence was in. However, this testimony established police first located Tavis Jeter, interviewed him, and obtained a written statement from him and relied in part on that statement in obtaining the arrest warrant for murder against Garnett. Police also interviewed Garnett's aunt and grandfather and discovered Garnett had admitted to them that he shot and killed the victim before obtaining the arrest warrant. And, police had worked the crime scene, seen the victim's injuries, and interviewed individuals there including Ronald Higgins before obtaining the arrest warrant on Garnett for murder. And,

finally, police had obtained a search warrant for Garnett's cell phone because he had fled the area after the murder. (R. pp. 625-648).

After the defense rested, the court informed the jury the State and the defense stipulated that Tavis Jeter died before trial from causes unrelated to this case. (R. pp. 746, 748).

At the close of the defense case, Garnett renewed his motion for a directed verdict. He argued the victim's blood alcohol would have lowered his inhibitions; there was a pocket knife found next to the garage; police rushed to judgment and signed a murder warrant too fast negating the evidence of flight; he [Garnett] testified the shooting was in self-defense; and, the State failed to prove he shot anyone in its case in chief. The State responded that given all of the evidence, including the fact that the court saw Garnett's testimony and did not have to accept the defendant's version of events as credible, and the malice that arises from the use of a deadly weapon, there was more than sufficient evidence to overcome the motion for a directed verdict. Judge Hayes then found considering all of the evidence, including considering all of the new evidence presented since he denied the motion for a directed verdict at the end of the State's case, pursuant to this Court's decision in Oates, 421 S.C. 1, 803 S.E.2d 911, there was more than sufficient evidence to overcome the motion for a directed verdict and submit the case to the jury; therefore, he denied the renewed motion for a directed verdict. (R. pp. 749-751). After deliberating, the jury found Garnett guilty of both murder and possession of a weapon during a violent crime beyond a reasonable doubt. (R. pp. 816-817).

## ARGUMENT II.

**Judge Hayes did not err in denying the motion for a directed verdict.**

***General Standard of Review***

*(Appellate)*

In criminal cases, this Court sits to review errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001). Thus on review, the appellate court is limited to determining whether the trial court abused its discretion. Wilson, 345 S.C. at 6, 545 S.E.2d at 829. An abuse of discretion occurs when the trial court's decision is unsupported by the evidence or controlled by an error of law. State v. Garrett, 350 S.C. 613, 619, 567 S.E.2d 523, 526 (Ct. App. 2002).

***Standard of Review / Directed Verdict***

*(Appellate)*

A defendant may only appeal from a trial judge's denial of a motion for a directed verdict of acquittal where there is a total failure of competent evidence tending to establish the charge laid in the indictment, and absent an error of law, the ruling must stand. State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984). "On appeal from the denial of a directed verdict this [court] views the evidence and all reasonable inferences in the light most favorable to the State." State v. Pearson, 415 S.C. 463, 470, 783 S.E.2d 802, 806 (2016)(quoting State v. Butler, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014)); State v. Bennett, 415 S.C. 232, 781 S.E.2d 352, 753 (2016). The appellate court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Brown, 402 S.C. 119, 740 S.E.2d 493, 495 (2013); State v. Gilliland, 402 S.C. 389, 741 S.E.2d 521, *3 (Ct. App. 2012). If there is any direct evidence, or if there is substantial circumstantial evidence, reasonably tending to prove the defendant's guilt, this Court

must find the trial court properly submitted the case to the jury. Brown, 740 S.E.2d at 495; State v. Hepburn, 406 S.C. 416, 753 S.E.2d 402 (2013); State v. Rogers 405 S.C. 554, 748 S.E.2d 265 (Ct. App. 2013); Gilliland at *3. This Court considers only the existence or non-existence of evidence, not witness' credibility or the evidence weight, in reviewing the denial of a directed verdict. Bennett, 415 S.C. 232, 781 S.E.2d at 353; State v. Cherry, 361 S.C. 588, 593, 606 S.E.2d 475, 478-79 (2004); Rogers *supra*, n. 5, 748 S.E.2d 265, n. 5. "An appellate court may reverse a circuit court only if 'there is no evidence to support' the circuit court's ruling." Oates, 421 S.C. at 18, 803 S.E.2d at 920 (quoting State v. Gaster, 349 S.C. 535, 555, 564 S.E.2d 87, 92 (2002)).

In reviewing the trial judge's denial of a motion for a directed verdict, this Court is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis. Pearson, 415 S.C. at 473-74, 783 S.E.2d at 907-08; Bennett, 415 S.C. 232, 781 S.E.2 at 354. If examining the evidence in the light most favorable to the State, there is evidence in the record which could induce a reasonable juror to find the defendant guilty, then this Court must affirm the trial judge's denial of the motion for a directed verdict. Pearson, 415 S.C. at 474, 783 S.E.2 808; Bennett, 781 S.E.2d at 354.

*The Waiver Rule*

Where co-defendants **are not** tried jointly, and the appellant testifies and calls witnesses in appellant's case in chief, the waiver rule applies and the appellate court, including this Court, will consider all the evidence in the record in determining whether or not the trial judge erred in denying the motion for a directed verdict. State v. Phillips, 416 S.C. 184, 195-97, 785 S.E.2d 448, 453-54 (2016)(explaining Hepburn waiver rule); Hepburn, 406 S.C. at 429-42, 753 S.E.2d at 410, *adopting* State v. Harry, 321 S.C. 273, 468 S.E.2d 76 (Ct. App. 1996); *Cf.* State v. Thompkins, 220 S.C. 523, 68 S.E.2d 465 (1951)(citation omitted).

*(Trial Court's Standard)*

A motion for directed verdict is properly denied when there is any evidence, direct or circumstantial, that reasonably tends to prove the defendant's guilt. State v. Brandt, 393 S.C. 526, 542, 713 S.E.2d 591, 599 (2011). When ruling on a directed verdict motion, the trial court is concerned with the existence or nonexistence of evidence, not its weight. Cherry, 361 S.C. at 593, 606 S.E.2d at 477-78; State v. Gaines, 380 S.C. 23, 667 S.E.2d 728, 732-33 (2008); *see* Rule 19(a), SCRCrP. A trial court should grant the directed verdict motion when the evidence merely raises a suspicion the accused is guilty, as suspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. Cherry, 361 S.C. at 594, 606 S.E.2d at 478. On the other hand, "a trial judge is not required to find that evidence infers guilt to the exclusion of any other reasonable hypothesis." Pearson, 415 S.C. at 473-74, 783 S.E.2d 805; Hepburn, 406 S.C. 416, 753 S.E.2d 402; Bennett, 415 S.C. 232, 781 S.E.2d at 354 *citing* Hepburn; Cherry, 361 S.C. at 594, 606 S.E.2d at 478 (emphasis removed). The trial judge is required to deny the motion for a directed verdict and submit the case to the jury if there is *any* direct evidence or *any* substantial circumstantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced. Hepburn, 406 S.C. at 429, 753 S.E.2d 402, *quoting* State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126, 127 (2000); *see also* Bennett, 781 S.E.2d at 354; State v. Freiburger, 366 S.C. 125, 136, 620 S.E.2d 737, 743 (2005)(If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the case must be submitted to the jury).

In ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must deny the motion for a directed verdict if the evidence is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt. Bennett, 781 S.E.2d at

354. The trial court "...must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt." Phillips, 416 S.C. at 193, 785 S.E.2d at 452, *quoting* Bennett, 415 S.C. at 237, 781 S.E.2d at 354. If examining the evidence in the light most favorable to the State, there is evidence in the record which could induce a reasonable juror to find the defendant guilty, then the trial judge must deny the motion for a directed verdict. Id.; Pearson, 415 S.C. at 474, 783 S.E.2 808.

***Analysis***

In the present case, the State more than satisfied the standard to overcome the motion for a directed verdict on the charges of murder and possession of a weapon during a violent crime. Judge Hayes appropriately denied the motion for a directed verdict at the close of the State's case and at the close of Garnett's case. There was **both** direct and substantial circumstantial evidence from which the trial judge and the jury could find Garnett guilty of murder. Considering the evidence, including all inferences, in the light most favorable to the State, Judge Hayes did not err, i.e. abuse his discretion, in denying the motion for a directed verdict.

*Corpus Delicti*

Garnett first appears to argue in his brief that the State failed to prove the *corpus delicti* of the crime independent of his statement to his aunt and grandfather that he was the shooter and killed the victim. This however, is incorrect.

The *corpus delicti* of a crime is the body, foundation, or substance of the crime, which ordinarily includes 2 elements: the act and the criminal agency of the act. *Black's Law Dictionary*, p. 344 (6th Ed. 1990). In a derivative sense, *corpus delicti* is the objective proof of substantial facts that a crime has been committed. It is a combination of 2 Latin words: "*corpus*"

meaning a body or physical substance, and "*delictum*" meaning a wrong, tort, injury or offense. *Black's Law Dictionary*, p. 344 (6th Ed. 1990).

When applied to any particular offense, the term *corpus delicti* means the specific crime has actually been committed. State v. Teal, 225 S.C. 472, 82 S.E.2d 787 (1954). The prosecution must show the actual commission by someone of the particular offense charged. State v. Brown, 103 S.C. 437, 88 S.E. 21 (1916). Before a defendant can be required to present a defense, or the case submitted to a jury, the State must establish some proof of the *corpus delicti*, and it must first produce proof *aliunde* of the corpus delicti. State v. Williams, 321 S.C. 381, 468 S.E.2d 656 (1996); Brown v. State, 307 S.C. 465, 415 S.E.2d 811 (1992); State v. Johnson, 291 S.C. 127, 352 S.E.2d 480 (1987); State v. Speights, 263 S.C. 127, 208 S.E.2d 43 (1974); State v. Blocker, 205 S.C. 303, 31 S.E.2d 908 (1944) Brown, 103 S.C. 437, 88 S.E. 21; State v. Townsend, 321 S.C. 55, 467 S.E.2d 138 (Ct. App. 1996). Proof *aliunde* meaning evidence from another source. *Black's Law Dictionary*, p. 73 (6th ed. 1990). A conviction based solely upon a defendant's confession cannot stand, unless such confession is corroborated by proof independent of the confession of the *corpus delicti*. Teal, 225 S.C. 472, 82 S.E.2d 787. The requirement that the *corpus delicti* of a crime be sufficiently corroborated by independent evidence is rooted in the premise that the examination of this additional evidence will avert the danger that a crime was wrongfully confessed to, when in fact no such crime was ever committed.

As a general rule, the connection of the accused with the crime, or the identity of its perpetrator, is not an element of the *corpus delicti*. The *corpus delicti* embraces the fact that a crime has been committed by someone, not that the defendant was the one who did the act or committed the crime. *Wayne R. LaFave & Austin W. Scott Jr., Substantive Criminal Law,*

Section 1.4(b), at 18-19 (2d Ed. 1986). Identifying the defendant as the perpetrator of the crime is not required for proof of the *corpus delicti*. 29A *Am. Jur.2d Evidence* Section 753 (1994).

Complete proof of the *corpus delicti* is not a prerequisite to the admission of an extra-judicial confession of a defendant, however, proof *aliunde* of the *corpus delicti* of the crime must be presented at some point during the State's case in chief. State v. Osborne, 335 S.C. 172, 516 S.E.2d 201 (1999). Regardless, of whether a defendant's statement constitutes a confession or admission, the rule of *corpus delicti* requires that there be corroborative evidence, independent of any statements, before a defendant may be found guilty of the crime. Osborne, 335 S.C. 172, 516 S.E.2d 201; Johnson, 291 S.C. 127, 352 S.E.2d 480; State v. Edwards, 173 S.C. 161, 175 S.E. 277 (1934); Hill v. State, 415 S.C. 421, 782 S.E.2d 414 (Ct. App. 2016). The extent of the corroboration necessary to establish the *corpus delicti* is set forth in Opper v. United States, 348 U.S. 84, 93 (1986), adopted by our Supreme Court in Osborne.

> [T]he corroborative evidence need not be sufficient, independent of the statements to establish the *corpus delicti*. It is necessary, therefore, to require the Government to introduce substantial independent evidence which would tend to establish the trustworthiness of the statement. Thus, the independent evidence serves a dual function. It tends to make the admission reliable, thus corroborating it while also establishing independently the other necessary elements of the offense. It is sufficient if the corroboration supports the essential facts admitted sufficiently to justify a jury inference of their truth. Those facts, plus the other evidence besides the admission must, of course, be sufficient to find guilt beyond a reasonable doubt.

Opper, 348 U.S. at 93. The corroboration rule is satisfied if the State provides sufficient independent evidence which corroborates the defendant's extrajudicial statements, and, together with such statements, presents a reasonable belief that the crime occurred. Id.; State v. Abraham, 408 S.C. 589, 759 S.E.2d 440 (Ct. App. 2014).

While evidence of the *corpus delicti* must be established by the best proof attainable, direct and positive evidence is not essential. Speights, 263 S.C. 127, 208 S.E.2d 43; State v. Townsend, 321 S.C. 55, 467 S.E.2d 138 (Ct. App. 1996). The *corpus delicti* of a crime may be proven by circumstantial evidence. State v. Owens, 293 S.C 161, 359 S.E.2d 275 (1987); State v. Roof, 196 S.C. 204, 12 S.E.2d 705 (1941); State v. Martin, 47 S.C. 67, 25 S.E. 113 (1896).

If there is any evidence tending to establish the *corpus delicti*, the trial judge has a duty to submit the case to the jury. State v. Dodd, 354 S.C. 13, 579 S.E.2d 331 (Ct. App. 2003). If the *corpus delicti* of the crime is not proven, and the sole evidence that a crime was committed is a confession, a directed verdict in favor of the defendant is required. Williams, 321 S.C. 381, 468 S.E.2d 656; Johnson, 291 S.C. 127, 352 S.E.2d 480. The question whether there is any proof of the *corpus delicti* is one for the court; whereas the sufficiency of the evidence in question is a question for the jury. *See* Brown, 103 S.C. 437, 88 S.E. 21.

Garnett misunderstands the purpose of the *corpus delicti* rule. It is to prevent the conviction of a person based on a confession alone when no crime was actually committed. That did not occur here. Garnett did not confess. He told his aunt and grandfather the shooting was in self-defense, but in doing so made an admission that he was the shooter in the murder of the victim, not Tavis Jeter. The State was not seeking to corroborate a confession to a crime. But, still the State corroborated the admission by Garnett that he was the shooter through Higgins' testimony, which is not part of the *corpus delicti*. More importantly the State proved as required, that a crime was committed, which is the *corpus delicti*, by evidence independent of Garnett's statements to his aunt and uncle. Osborne, 335 S.C. 172, 516 S.E.2d 201; Abraham, 408 S.C. 589, 759 S.E.2d 440.

Here, the State proved the *corpus delicti* of the crime without any question. The victim was at his own premises having a party with family and friends. There was some type of brief verbal altercation or disagreement between the victim and Garnett; however, witnesses stated neither man seemed mad or upset by the words exchanged. Garnett and the individual he came with went outside on the victim's ramp. After several minutes, the victim walked outside on his own ramp. He was seen by a friend, Higgins, leaning on a railing on his porch and talking to Garnett and the other individuals outside. The victim was out on the porch talking with the men for 5 to 7 minutes when Higgins heard 3 gunshots. When Higgins immediately turned and looked out the French doors, he saw Garnett at the bottom of the ramp, near the corner of the house, shooting a gun down at the ground and Higgins heard a 4th gunshot. It is undisputed Garnett fired 8 shots and shot the victim 7 times with a 9 mm pistol killing him. Two (2) shots entered the victim's left side and exited his right side, consistent with the position of the victim when Higgins last saw him leaning on the porch rail talking. Five (5) of the shots were to the victim's back or back side. One (1) of these shots entered just above the center of the victim's buttocks in his lower back and traveled upwards lodging in his upper shoulder or arm. Another bullet entered the victim's back and traveled upwards. Two (2) more bullets entered the victim's legs and traveled upwards. These four (4) shots could have been fired while the victim was bent over the railing talking to the men on the ramp or when he lying on the ground helpless. The shot which entered above the buttocks was the shot that killed the victim. The 1 other shot to the back was downward consistent with the victim having been shot bent over after he was initially shot or as he staggered down the ramp or as he reached its bottom. There were no "straight on" gunshots to the front of the victim's body. The victim did not shoot himself. The gunshots were intermediate or distant gunshots and not close or contact gunshots. There was no

firearm found at the scene. The shooter, Garnett, then fled the scene, disposed of the murder weapon, and fled Spartanburg County. He also hid out from authorities for 5 months and gave a false name when arrested in an attempt to avoid apprehension. The State established the *corpus delicti*, a crime was committed, independent of any statement of the defendant Garnett. Osborne, *supra*; Abraham, *supra*.

The State proved the identity of the killer, which is **not** the *corpus delicti*, through the testimony of Higgins, and through the other witnesses at the party who testified, and through Garnett's admission to his aunt and grandfather that he was the shooter.[5] This appellate ground has no merit and must be denied. Dodd, 354 S.C. 13, 579 S.E.2d 331 (if there is any evidence tending to establish the *corpus delicti*, the trial judge has a duty to and must submit the case to the jury).

*General Directed Verdict*

Garnett also argues the State failed to introduce sufficient evidence that he committed the murder or the elements of murder. Garnett is wrong.

The State's evidence established the victim was hosting a birthday party for his aunt on his own premises on the night he was killed. Garnett came to the party with his friend Tavis. They went to the bar and attempted to order alcoholic beverages. The victim informed them they would have to pay for any alcoholic drinks. There was some small disagreement over this, but no one was upset or angry. Garnett and his friend went out on the victim's ramp. The victim

[5] Garnett claims in ruling on a directed verdict motion, the State and the trial judge must accept as fact Garnett's version of events which he related to his aunt and grandfather. This simply is not true. The State, in meeting the standard to overcome a directed verdict, and the trial judge in ruling on the sufficiency of evidence to deny a directed verdict, can treat Garnett's statements to his aunt and grandfather as an admission he was the shooter, but do not have to accept the self-serving statements as completely true, especially given the other testimony and evidence admitted in the case. It is axiomatic that the trial judge does not determine credibility.

finished working the bar and sat down and played cards for a few minutes with his wife and some ladies in the front room of the renovated house. He then went to play pool in the great room.

Mr. Higgins was waiting to play pool with the victim and saw the victim walk by the pool table in the great room and go out the French doors onto the ramp. Higgins testified the victim was not angry and did not have any kind of weapon in his hand including a knife. Higgins testified he continued to wait on the victim to play a game of pool with him and he looked out the French doors 2 or 3 times to see what was taking the victim so long and he saw the victim was standing on the ramp talking to the men outside. The last time Higgins looked out the window, the victim was still talking to the men while leaning on the ramp railing with his forearms while looking toward his residence, which was located behind the renovated house. Higgins decided to play pool with another man and was about to break the rack of billiards when he heard 3 gunshots. He immediately looked out the French doors again and saw Garnett standing on the ground at the back left corner of the ranch portion of the renovated house shooting a gun down at the area near the bottom of the ramp. Higgins saw and heard a 4th gunshot. Higgins thought Garnett was showing off or "shooting off steam" and did not realize at the time he was shooting the victim because he could not see the victim. Higgins turned back to the pool table. A few moments later, Higgins decided to check on the victim because gunshots had been fired, and went outside, and found the victim at the bottom of the ramp.

Before Higgins went outside to check on the victim, James Dallison, who had been working the bar with the victim earlier, heard the gunshots and immediately went outside and found the victim at the bottom ramp lying on his stomach, i.e. face down. His body was lying parallel with the garage with his head toward the back of the garage and his feet toward the

driveway. Dallison and someone else rolled the victim over toward the garage. The victim expired moments later.

When police arrived at the scene they found a total of 8 fired 9mm shell casings starting near the back left corner of the ranch portion of the renovated house and leading to the area around or near the victim's body. There were no shell casings on the ramp, they were all located on the ground. There was a fired projectile also found at the base of the garage wall. The autopsy showed the victim had been shot 2 times in his left side area with the shots traveling across the front of his body and exiting on his right side area. One (1) of these bullets re-entered the victim's right wrist. Crime scene investigators found bullet strikes to the outside wall of the great room to the left of the outside of the French doors. And, there was blood spatter on the outside of the French doors. The 2 entry wounds near the left side were consistent with the victim having been shot while leaning over the railing on the ramp talking, as described by Higgins. The remainder of the gunshots were to the victim's back or back side. These gunshot wounds to the back, except for 1, all traveled upward, and were consistent with the victim having been shot while leaning over the railing of the ramp talking or while helpless and face down on the ground at the foot of the ramp, as described by Higgins. The other wound to the back was consistent with the victim being shot bent over as he turned after being initially shot or as he staggered down the ramp or at its bottom before he collapsed. There were **no** entry gunshot wounds to the direct front of the victim's body consistent with a "straight on" shot as described by Garnett. The pathologist also testified the gunshot wounds were intermediate or distant gunshot wounds and were not close or contact wounds based on his examination of the wounds and the victim's clothing. This is also consistent with Garnett shooting the victim while Garnett was standing near the back left corner of the renovated house, not in a "straight on" attack as

described by Garnett. Further, from the fact that Garnett shot the victim 7 times, including 2 times in the side and 5 times in the back with a loaded firearm, the trial court could find the existence of malice aforethought sufficient to deny the motion for a directed verdict. State v. Burdette, 427 S.C. 490, **503-504**, 832 S.E.2d 575, **583** (2019)(a jury is not to be instructed on the inference of malice from a deadly weapon, but the trial court can still infer or find malice from the use of a deadly weapon, in ruling on a motion for a directed verdict by the defense).[6]

Garnett fled the crime scene immediately after shooting the victim. This is evidence of consciousness of guilt, intent, and an attempt to avoid apprehension. State v. Beckham, 334 S.C. 302, 315, 513 S.E.2d 606 (1999)("Evidence of flight has been held to constitute evidence of guilty knowledge and intent."); State v. Thompson, 278 S.C. 1, 292 S.E.2d 581(1982)(evidence of flight shows guilty knowledge, intent, and that defendant sought to avoid apprehension) *overruled on other grounds by* State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991); State v. Ballenger, 322 S.C. 196, 200, 470 S.E.2d 851, 854 (1996)(flight is some evidence of guilt); State v. Walker, 366 S.C. 643, 654-55, 623 S.E.2d 122, 127-28 (Ct. App. 2005)(Flight from prosecution is evidence of guilt.); State v. Crawford, 362 S.C. 627, 608 S.E.2d 886 (Ct. App. 2005); State v. Byers, 277 S.C. 176, 177-178, 284 S.E.2d 360, 361 (1981); State v. Grant, 275 S.C. 404, 407, 272 S.E.2d 169, 171(1980)(attempts to run away have always been regarded as some evidence of guilty knowledge and intent); State v. Al-Amin, 353 S.C. 405, 413, 578 S.C. 32, 36-37 (Ct. App. 2003)(flight from prosecution is evidence of guilt to be considered at the

[6] In Burdette, our Supreme Court specifically stated: "Of course, our ruling does not prohibit a trial court from citing outside the presence of the jury the proposition that malice may be inferred from the use of a deadly weapon. For example, when ruling on a defendant's motion for a directed verdict on the ground that the State has failed to prove the element of malice, a trial court may take into account that the deed was done with a deadly weapon." Burdette, 427 S.C.at 503-504, 832 S.E.2d at 583.

directed verdict stage), *overruled on other grounds* State v. Broadnax, 414 S.C. 468, 779 S.E.2d 789 (2015).

And, before Garnett fled from Woodruff, he left his aunt's residence for a period of time and the murder weapon was never recovered. "The attempted destruction of evidence is regarded as a relevant incriminating circumstance." Beckham, 334 S.C. 302, 513 S.E.2d 606 (referencing State v. Epes, 209 S.C. 246, 39 S.E.2d 769 (1946)); Al-Amin, 353 S.C. 405, 578 S.C. 32 (the attempted destruction or concealment of evidence is relevant incriminating evidence), *overruled on other grounds* Broadnax, 414 S.C. 468, 779 S.E.2d 789; State v. Wells, 162 S.C. 509, 161 S.E. 177 (1931)(similar).

As Judge Hayes recognized in ruling on the stand your ground issue, Garnett eventually fled Woodruff after the commission of the crime, and after returning his aunt's car to her. He remained on the run hiding from police for approximately 5 months and resisted arrest and gave a false name when arrested in Columbia. Again, this is specific evidence of guilt. Walker, 366 S.C. at 654-55, 623 S.E.2d at 127-28 (Flight from prosecution is evidence of guilt.); *see also* Crawford, 362 S.C. 627, 608 S.E.2d 886; Byers, 277 S.C. at 177-178, 284 S.E.2d at 361. Flight is evidence of consciousness of guilt, intent, and the attempt to avoid apprehension. Beckham, 334 S.C. at 315, 513 S.E.2d 606 ("Evidence of flight has been held to constitute evidence of guilty knowledge and intent."); Thompson, 278 S.C. 1, 292 S.E.2d 581(flight shows guilty knowledge, intent, and that the defendant sought to avoid apprehension).

*The Defense Case*

Further, under the waiver rule, the defense' case only added to the clear evidence of guilt. It further solidified the State's case against Garnett, and this Court must affirm. State v. Phillips, 416 S.C. 184, 195-97, 785 S.E.2d 448, 453-54 (2016)(explaining Hepburn waiver rule) Hepburn,

406 S.C. at 429-42, 753 S.E.2d 402, *adopting* State v. Harry; *Cf.* Thompkins, *supra*. Garnett testified and admitted it was he who shot the victim. While he claimed self-defense, he admitted he brought the loaded firearm with him to the party. He admitted he shot the victim 7 times and fired a total of 8 shots. He admitted he fired every bullet he had in the gun. He admitted some of the shots were fired while the victim was down on the ground at the base of the ramp. He admitted Tavis did not fire any of the shots that killed the victim. He admitted he and Tavis fled immediately after the shooting. He admitted he took Tavis home, and he went to his aunt's house where he tried to persuade her to drive him to Columbia. Garnett admitted his aunt and grandfather told him to turn himself in, but he did not. He admitted he left his aunt's house for approximately 20 minutes and disposed of the murder weapon behind his grandfather's house in some woods. "The attempted destruction of evidence is regarded as a relevant incriminating circumstance." Beckham, 334 S.C. 302, 513 S.E.2d 606 (referencing Epes, 209 S.C. 246, 39 S.E.2d 769); Al-Amin, 353 S.C. 405, 578 S.C. 32 (the attempted destruction or concealment of evidence is relevant incriminating evidence), *overruled on other grounds* Broadnax, 414 S.C. 468, 779 S.E.2d 789; Wells, 162 S.C. 509, 161 S.E. 177. He admitted he returned to his aunt's house and again tried to persuade her to drive him to Columbia but she refused. He admitted he eventually left her house on foot and called a friend, who picked him up and drove him out of town. He admitted he hid from police for 5 months in Columbia, S.C. He admitted when he was eventually arrested there on an unrelated charge, he gave a false name to avoid detection for the murder in Spartanburg County for which he knew he was wanted by police. Flight is evidence of guilt when sufficiently connected to the murder, as it was in this case. Beckham, 334 S.C. 302, 513 S.E.2d 606; Al Amin, 353 S.C. 405, 578 S.E.2d 32; State v. Milan-Hernandez, 287 S.C. 183, 336 S.E.2d 476 (1985).

*Judge Hayes' alleged improper reliance on State v. Oates*

Finally, Garnett argues Judge Hayes improperly relied on this Court's Opinion in State v. Oates, 421 S.C. 1, 803 S.E.2d 911 (Ct. App. 2017), in denying the motion for a directed verdict at the close of the State's case. Garnett is wrong.

In Oates, 421 S.C. 1, 803 S.E.2d 911, this Court appropriately set forth the standard of review for ruling on a motion for a directed verdict. Oates, 421 S.C. at 18-23, 803 S.E.2d at 920-23. While Garnett seeks to distinguish Oates from the present case, Oates contains the correct standard of review in ruling on a motion for a directed verdict when the defendant asserts self-defense. Id. at 18-23, 803 S.E.2d at 920-923. In fact, Oates is a case in which the defendant, like Garnett, asserted he was immune from prosecution under "stand your ground" **and** alleged he was also entitled to a directed verdict based on his testimony he acted in self-defense. Id. Judge Hayes' reliance on Oates was not misplaced because Oates was correctly decided on its facts and contains the appropriate standard of review on which Judge Hayes relied in denying the motion for a directed verdict where Garnett asserted self-defense. Id. In ruling on a motion for a directed verdict when the defendant asserts self-defense, the State does not have to disprove self-defense beyond a reasonable doubt to the trial judge. Oates, 421 S.C. at 18-23, 803 S.E.2d at 920-23. It is only when the uncontroverted facts establish self-defense as a matter of law that the defendant is entitled to a directed verdict. Id. (distinguishing State v. Butler, 407 S.C. 376, 755 S.E.2d 457 (2014) from State v. Dickey, 394 S.C. 491, 716 S.E.2d 101 (2011)). When there are contested issues of fact and an issue as to the credibility of the witnesses, as there was in this case, whether the defendant committed murder or acted in self-defense, then the motion for a directed verdict should be denied and the case submitted to the jury. Id. As discussed in detail above, the testimony and evidence from the State's witnesses in the present case, and all

inferences therefrom considered in the light most favorable to the State, disproved self-defense and proved murder. As a result, the motion for a directed verdict was appropriately denied, and this argument has no merit.

Additionally, like in Oates, when Judge Hayes ruled on the renewal of the directed verdict motion at the end of the defense' case, all of the evidence was in, including Garnett's version of events. Id. Therefore, Judge Hayes appropriately relied on Oates, and there is no merit to Garnett's argument for this reason as well.

*Conclusion*

As a result, there was more than sufficient evidence to overcome the motion for directed verdict, whether at the end of the State's case or at the end of the defense' case. Judge Hayes did not abuse his discretion in denying the same.

## CONCLUSION

Judge Hayes did not abuse his discretion in denying the motion for immunity or in denying the motion for a directed verdict. For the above stated reasons, Garnett's convictions for murder and possession of a weapon during a violent crime must be affirmed.

Respectfully Submitted,

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September 29, 2020.

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Sep 29 2020
SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

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Appeal from Spartanburg County
The Honorable J. Mark Hayes, II, Circuit Court Judge

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THE STATE,

Respondent,

v.

ADRIEL NICHOLAS GARNETT,

Appellant.

Appellate Case No. 2019-000722

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**CERTIFICATE OF COMPLIANCE**

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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 29th day of September, 2020.

s/ J. Anthony Mabry
J. ANTHONY MABRY
Senior Assistant Attorney General

ATTORNEY FOR RESPONDENT