STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JANE KATHERINE HUGHES,

APPELLANT

APPELLATE CASE NO 2018-000659

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. In this murder trial, did the trial judge err in refusing to instruct the jury on the law of assault and battery of a high and aggravated nature when there was evidence from which the jury could decide that Appellant only committed an assault and battery that did not result in death?

2. Did the trial judge err in refusing to direct a verdict of acquittal for conspiracy when the State failed to prove that an agreement existed between Appellant and anyone else to commit murder?

3. Did the trial judge err in refusing to grant trial counsel's motion to be relieved as counsel?

STATEMENT OF THE CASE

In June of 2015, the Greenville County Grand Jury indicted Appellant, Jane Katherine Hughes, for murder and possession of a weapon during the commission of a violent crime In June of 2017, the Greenville County Grand Jury indicted Appellant for conspiracy. On April 4, 2018, Appellant, with her brother and co-defendant, Jacob Cody Hughes, proceeded to jury trial before the Honorable Perry H. Gravely on just the murder and conspiracy charges as the State elected not to go forward on the weapon charge. (R. p. 26, lines 7-10). Lauren M. Taylor represented Appellant at trial. Brian P. Johnson represented the co-defendant. L. Mark Moyer prosecuted the case. The jury found Appellant guilty of both charges. The jury found the co-defendant not guilty of murder but guilty of conspiracy. Judge Gravely sentenced Appellant to thirty (30) years for murder and five (5) years concurrent for conspiracy. Judge Gravely sentenced the co-defendant to four (4) years for conspiracy. A timely notice of intent to appeal was served on April 10, 2018. This appeal follows.

STANDARDS OF REVIEW

This Court reviews the trial judge's failure to charge assault and battery of a high and aggravated nature for abuse of discretion. "In criminal cases, the appellate court sits to review errors of law only." State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). "An appellate court will not reverse the trial judge's decision regarding jury charges absent an abuse of discretion." State v. Santiago, 370 S.C. 153, 159, 634 S.E.2d 23, 26 (Ct.App.2006). Generally, the trial court is required to charge only the current and correct law of South Carolina. Sheppard v. State, 357 S.C. 646, 665, 594 S.E.2d 462, 472 (2004). A charge to the jury is correct if it contains the correct definition of the law when read as a whole. Id. at 665, 594 S.E.2d at 472-73.

"In criminal cases, appellate courts sit to review only errors of law." State v. Sams, 410 S.C. 303, 307, 764 S.E.2d 511, 513 (2014); see also State v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (2006); State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001). An appellate court is bound by a trial court's factual findings unless they are clearly erroneous. Wilson, 345 S.C. at 6, 545 S.E.2d at 829.

"The law to be charged to the jury is determined by the evidence presented at trial." State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). "The trial court is required to charge a jury on a lesser-included offense if there is evidence from which it could be inferred that the defendant committed the lesser, rather than the greater, offense." Sams, 410 S.C. at 308, 764 S.E.2d at 513; see also State v. Drafts, 288 S.C. 30, 340 S.E.2d 784 (1986); State v. Gourdine, 322 S.C. 396, 472 S.E.2d 241 (1996). "An appellate court will not reverse the trial [court]'s decision absent an abuse of discretion." State v. Pittman, 373 S.C. 527, 570, 647 S.E.2d 144, 166 (2007). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *Id.* at 570, 647

S.E.2d at 166–67. "The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand is an error of law." Id. at 570, 647 S.E.2d at 167. "In determining whether the evidence requires a charge on a lesser-included offense, the [appellate court] must view the facts in the light most favorable to the defendant." Sams, 410 S.C. at 308, 764 S.E.2d at 513 (citing State v. Cole, 338 S.C. 97, 525 S.E.2d 511 (2000)). "The charge request is properly rejected when there is no evidence tending to show the defendant was guilty of the lesser offense." Id. (citing State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996); State v. Cooney, 320 S.C. 107, 463 S.E.2d 597 (1995); State v. Gadsden, 314 S.C. 229, 442 S.E.2d 594 (1994)).

In reviewing the trial judge's failure to direct a verdict of acquittal on the conspiracy indictment this Court must view the evidence and reasonable inferences in the light most favorable to the State. If there is either any direct evidence or any substantial circumstantial evidence reasonably tending to prove the defendant's guilt, appellate courts must find that the trial judge properly submitted the case to the jury. State v. Cherry, 361 S.C. 588, 593-94, 606 S.E.2d 475, 478 (2004). "A case should be submitted to the jury when the evidence is circumstantial 'if there is any substantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced.'" State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011) (quoting State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)). "Evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt." Id. "Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error." Id. at 139, 708 S.E.2d at 776-777. "On appeal of the denial of a directed verdict of acquittal, this Court must look at the evidence in the light most favorable to the state." Id. at 139, 708 S.E.2d

at 777; see also State v. Hepburn, 406 S.C. 416, 429 753 S.E.2d 402, 409 (2013). If the state failed to present any direct evidence or any substantial circumstantial evidence reasonably tending to prove guilt of the accused, the appellate court must reverse the lower court's denial of the directed verdict motion. Hepburn, 406 S.C. at 416, 429 S.E.2d at 409.

This Court reviews the trial judge's refusal to grant trial counsel's motion to be relieved for an abuse of discretion. State v. Gregory, 364 S.C. 150, 152–53, 612 S.E.2d 449, 450 (2005). "[A] motion to relieve counsel is addressed to the discretion of the trial judge and will not be disturbed absent an abuse of discretion." State v. Graddick, 345 S.C. 383, 385, 548 S.E.2d 210, 211 (2001) (citation omitted). An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendants. Fuller v. State, 347 S.C. 630, 557 S.E.2d 664 (2001). The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction. *See* Langford v. State, 310 S.C. 357, 359, 426 S.E.2d 793, 795 (1993) citing Cuyler v. Sullivan, 446 U.S. 335, 350, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980). However, a defendant need not demonstrate prejudice if there is an actual conflict of interest. Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001); Duncan v. State, 281 S.C. 435, 315 S.E.2d 809 (1984) *citing* Cuyler v. Sullivan, 446 U.S. 335, 348-350, 100 S.Ct. 1708, 1718-19, 64 L.Ed.2d 333 (1980).

STATEMENT OF FACTS

Appellant was indicted for murder and conspiracy involving the shooting death of John Ferrell, her estranged husband and the father of her two young children. Appellant and Ferrell were involved in a highly contested custody dispute. At the time of the shooting, Appellant, her boyfriend, Andrew Martin and her two children were living with her parents, John and Margaret Hughes. (R. p. 306, lines 15-17). Martin testified at trial that on the day of the shooting John Hughes, Appellant's father, told him that he was trying to arrange a meeting with Ferrell at the house to work out the custody issue. (R. p. 312, lines 9-25). Martin was asked to stay out of sight so as not to be a detriment to the custody case. (R. p. 313, lines 13-15). According to Martin, on the night of the shooting he was in the backyard when he heard a loud crash inside the house. (R. p. 315, lines 4-11). Martin testified that he went inside to investigate and, "[w]hen I entered the sliding glass door, I saw framed in the kitchen entry way, Jane with a hammer, John Michael Hughes with a gun, John Ferrell on his knees bleeding, and Jacob Hughes behind him." (R. p. 315, lines 21-25).

Martin testified that he pulled Appellant back and took the hammer out of her hand so she could call the police. (R. p. 318, line 19 – p. 319, lines 1-12). The State entered a CD of Appellant's call to 911, State's exhibit #94, in evidence without objection[1]. (R. p. 55, lines 11-19). The 911 call was later player for the jury. (R. p. 448, lines 6-7). According to Martin, Ferrell tried to escape through a kitchen window but Appellant's mother, Margaret Renee Hughes, and co-defendant brother, Jacob Hughes, tried to prevent him from going out the

[1] When the call is later played for the jury trial counsel stated, "Subject to my previous objection." (R. p. 448, line 4). No objection was made, however, when the exhibit was entered in evidence.

window. (R. p. 320, lines 6-22). When asked if Ferrell made it out of the window, Martin answered that he believed Ferrell made it out of the window because he did not use the door and his body was found outside. (R. p. 321, lines 1-9). Martin testified that he saw John Hughes go outside and then Martin heard several gunshots. (R. p. 321, line 14 – p. 322, lines 1-11). Martin stayed seated on a bench in the foyer with Appellant until they were asked to leave the house when the police arrived. (R. p. 323, line 24 – p. 324, lines 1-3). Ferrell died as a result of multiple gun shot wounds. (R. p. 371, lines 2-3). The pathologist also testified that Ferrell had non-lethal injuries consistent with being struck by a hammer. (R. p. 381, lines 1-11).

Martin was in the back yard and could not testify about what happened before he walked into the house. When asked if Appellant told him why she did what she did with the hammer Martin answered, "She said she did it because her dad hesitated. And that she did what she had to do to protect her family." (R. p. 324, lines 18-19).

The Bishop of the church the Hughes attended asked another church member, Christine Boisher, if she and her husband could talk with the Hughes family about the custody situation because Boisher had served as a guardian-ad-litem and had experience with the family court. (R. p. 415, line17 – p. 416, lines 1-10). Boisher and her husband met with John and Margaret Hughes, Jane Hughes and Andrew Martin. (R. p. 417, lines 23-25). Boisher and her husband also met with the Hughes the night before the shooting. Boisher testified that Appellant was angry about a court hearing in a few days to address custody issues. (R. p. 439, line 15 – 25). Boisher also testified, "And she [Appellant] said, I wish he [Ferrell] was just gone. Things would be so much easier if he [Ferrell] was just gone. And everybody chuckled." (R. p. 440, lines 12-14). Appellant and Ferrell lived in California until Appellant moved back to South Carolina with the children. (R. p. 234, lines 9-21).

The State introduced evidence that earlier in the evening Jacob Hughes and Ferrell went to the Station Bar for two to three hours and then went to the Waffle House. (R. pp. 450-457). The time stamp of video surveillance showed the two leaving the Waffle House at approximately 11:20 PM. (R. p. 456, lines 1-12). The 911 call was made at 11:54 PM. (R. p. 55, lines 5-9). The State also introduced evidence of text messages and phone calls between John Hughes and Jacob Hughes prior to the shooting. (R. pp. 461-464). The State did not introduce any evidence of text messages or phone calls between Appellant and either Jacob or John Hughes.

At sentencing the prosecutor told the judge, "Other than regarding Jane Hughes, Your Honor sentenced her father, who was the shooter, to 40 years. It is our contention that she is just as guilty, if not more so, than her father. And that this was all because of her. And we would ask the Court for a similar sentence as you gave her father." (R. p. 585, line 21 – p. 586, line 1). Neither Appellant nor her brother co-defendant had any prior criminal record. (R. p. 586, lines 6-7).

ARGUMENTS

1. **In this murder trial, the trial judge erred in refusing to instruct the jury on the law of assault and battery of a high and aggravated nature when there was evidence from which the jury could decide that Appellant only committed an assault and battery that did not result in death.**

During the trial the judge asked for proposed jury instructions and trial counsel stated, "I don't have mine typed up because I thought we were doing that after lunch. I just have one additional. I was going to request an ABHAN." (R. p. 393, lines 17-19). The judge indicated that he would review the proposed instructions during the lunch break. (R. p. 393, lines 20-21). Later, the judge denied the requested jury instruction on assault and battery of a high and aggravated nature [ABHAN] stating, "As to the jury charge, I know that Defendant Jane Hughes has – had requested a charge for ABHAN, assault and battery of a high and aggravated nature. And I think that is a totally separate issue and would not be – that would be a separate charge. It would not be a lesser included offense of the charges here. So I'm going to decline to charge that. But, at this time, I'll be glad to have anybody put anything on the record they need to." (R. p. 507, lines 6-15).

Trial counsel responded, "Certainly, Your Honor. May it please the Court. As I stated in chambers and just to put it on the record, I do believe that there's been sufficient evidence that the State has introduced, at this point, that establishes that the Defendant – or the victim died from a gunshot wound. I believe gunshot wound number four, the pathologist testified to – that that was the mortal would and cause of death. And so that is the basis for me asking for the instruction." (R. p. 507, lines 18-25). The trial judge responded, "And I understand your argument. Again, I find that, under the law, that would not be appropriate to charge." (R. p. 508, lines 1-3). The trial judge erred.

The murder indictment alleges, "That JANE KATHERINE HUGHES did in Greenville County, on or about the 24th day of January, 2015, unlawfully and with malice aforethought kill JOHN MICHAEL FERRELL by means of shooting him multiple times with a handgun and assaulting him with a hammer, and that JOHN MICHAEL FERRELL dies as a proximate result thereof. This in violation of §of the South Carolina Code of Laws (1976) as amended." The State sought to prosecute both Appellant and her brother by accomplice liability, hand of one is the hand of all, as the evidence showed that the father, John Hughes, was the shooter. The prosecutor argued accomplice liability, hand of one is the hand of all, in closing argument. (R. p. 537, lines 10-18). The judge instructed the jury with the law on accomplice liability, hand of one is the hand of all. (R. p. 571, line 8 – p. 572, lines 1-17). The jury had two specific questions about the hand of one is the hand of all charge. (R. p. 579, lines 7-10; p. 580, lines 6-8). There is evidence in the record from which the jury could have determined that Appellant, in striking Ferrell with the hammer, was guilty only of assault and battery of a high and aggravated nature and not guilty of murder by accomplice liability, hand of one is the hand of all. The jury, however, was not given this option.

In State v. Fields, 314 S.C. 144, 145, 442 S.E.2d 181, 182 (1994), the South Carolina Supreme Court wrote, "Whether AB and ABHAN are lesser included offenses of murder is a novel question in this State. We now hold where there is no dispute the victim died as a result of the battery alleged in the indictment, AB and ABHAN are not lesser included offenses of murder. See Martin v. State, 342 So.2d 501 (Fla.1977) [superceded by rule as stated in Daugherty v. State, 211 So.3d 29 (Fla. 2017); Commonwealth v. Myers, 356 Mass. 343, 252 N.E.2d 350 (1969)." In Fields the deceased died as a result of the battery alleged in the

indictment, a beating. In contrast, in the present case, Ferrell died as a result of the shooting, alleged in the indictment but not the battery with the hammer alleged in the indictment.

In State v. Tyler, 348 S.C. 526, 531-32, 560 S.E.2d 888, 890 (2002), the South Carolina Supreme Court found error with the trial court equating ABHAN and manslaughter but found the error harmless writing:

> Accordingly, we find any choice the jury had in the present case between manslaughter and ABHAN was not premised upon malice or the absence thereof, but upon whether it found Tyler's actions had proximately resulted in her husband's death. Given that the possibility of an ABHAN or ABIK verdict was not premised upon malice or a lack thereof, but upon the proximate cause of the victim's death, we find the erroneous ABHAN charge did not contribute to the jury's verdict, such that any error was harmless. See State v. Jefferies, 316 S.C. 13, 446 S.E.2d 427 (1994) (erroneous jury charge which does not contribute to jury's verdict is harmless).

At trial Tyler presented evidence that her husband's death may have been caused by medical malpractice and the trial judge properly charged the jury that if they found that Tyler's actions did not proximately cause her husband's death, then they could consider the assault and battery charges. While the present case does not involve an allegation of medical malpractice, it does involve a proximate cause issue. The jury could have found that Appellant's actions in striking Ferrell with a hammer did not proximately cause his death. The jury should have been instructed with the law on assault and battery of a high and aggravated nature.

In Com. v. Myers, 356 Mass. 343, 349–50, 252 N.E.2d 350, 354 (1969), the Supreme Judicial Court of Massachusetts, Suffolk, wrote:

> Whether assault and battery is a lesser included offence of which a defendant may be convicted under an indictment for murder is a question which appears not to have been discussed by this court. There is, however, an intimation in Commonwealth v. Vanetzian, 350 Mass. 491, 215 N.E.2d 658, that assault and battery is a lesser included offence.[1] Elsewhere it is generally held that assault and battery is a lesser included offence in an indictment charging unlawful homicide. Keel v. State, 29 Ala.App. 191, 194 So. 416. State v. Myers, 59 Ariz. 200, 201, 207—208, 125 P.2d 441. Sullivan v. State, 236 Ind. 446, 452, 139 N.E.2d 893,

> Bailey v. State, 146 Miss. 588, 593. State v. Cochrane, 151 Ohio St. 128, 84 N.E.2d 742. Antoscia v. Superior Court, 38 R.I. 332, 336, 95 A. 848. See State v. Robinson, 182 Kan. 505, 509—510, 322 P.2d 767; 40 Am.Jur.2d, Homicide, s 535.
>
> There are varying views, however, as to what circumstances require an instruction that a verdict of assault and battery may be returned. Contrast Marts v. State, 26 Ohio St. 162, 169; State v. Champion, 109 Ohio St. 281, 287—288, 142 N.E. 141; State v. Cochrane, 151 Ohio St. 128, 129—130, 84 N.E.2d 742, and State v. Myers, 59 Ariz. 201, 202—208, 125 P.2d 441, with Sullivan v. State, 236 Ind. 446, 139 N.E.2d 893, and with State v. Robinson, 182 Kan. 505, 509—510, 322 P.2d 767. Of these views that enunciated by the Supreme Court of Ohio seems to us the most desirable, and we adopt it. Under that rule there must be an instruction on assault and battery if, but only if, the evidence raises a reasonable doubt that the acts of the defendant did not cause the victim's death. Marts v. State, 26 Ohio St. 162, 169; State v. Champion, 109 Ohio St. 281, 287—288, 142 N.E. 141; State v. Cochrane, 151 Ohio St. 128, 129—130, 84 N.E.2d 742.

In the present case there is no question that the purported act of Appellant striking Ferrell with a hammer did not cause his death. Ferrell's death was caused by gunshot wounds not a hammer. The jury should have been instructed on ABHAN. "In determining whether the evidence requires a charge on a lesser-included offense, the [appellate court] must view the facts in the light most favorable to the defendant." Sams, 410 S.C. at 308, 764 S.E.2d at 513 (citing State v. Cole, 338 S.C. 97, 525 S.E.2d 511 (2000)). "The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand is an error of law." Pittman, 373 S.C. at 570, 647 S.E.2d at 167. The trial judge 's refusal to instruct the jury with the law of assault and battery of a high and aggravated nature constitutes an error of law. The error is not harmless.

2. **The trial judge erred in refusing to direct a verdict of acquittal for conspiracy when the State failed to prove that an agreement existed between Appellant and anyone else to commit murder.**

At the close of the State's case Appellant moved for a directed verdict of acquittal for the conspiracy charge arguing, "Your Honor, at this point, I would make a motion to have the Court rule on the conspiracy charge. I don't believe the State has net the burden, even in the light most favorable to them, at this point." (R. p. 499, lines 6-9). The judge denied the motion stating, "All right. I think there is enough for this matter to go to the jury on the conspiracy charge. So I'm going to deny your motion." (R. p. 499, lines 10-12). The trial judge erred.

The conspiracy indictment alleges, "That JANE KATHERINE HUGHES did in Greenville County, on or about the 24th day of January, 2015, willfully and unlawfully combined with Margaret Hughes and/or Jacob Hughes and/or John Hughes for the purpose of accomplishing an unlawful object or a lawful object by unlawful means, to wit: Murder. This is in violation of §16-17-0410 of the South Carolina Code of Laws (1976) as amended."

S.C. Code §16-17-410 provides, "The common law crime known as 'conspiracy' is defined as a combination between two or more persons for the purpose of accomplishing an unlawful object or lawful object by unlawful means." In State v. Buckmon, 347 S.C. 316, 323, 555 S.E.2d 402, 405 (2001), the South Carolina Supreme Court wrote:

> A conspiracy is a combination or agreement between two or more persons for the purpose of accomplishing a criminal or unlawful object, or achieving by criminal or unlawful means an object that is neither criminal nor unlawful. State v. Wilson, 315 S.C. 289, 433 S.E.2d 864 (1993). The essence of a conspiracy is the agreement. Id. It may be proven by the specific overt acts done in furtherance of the conspiracy but the crime is the agreement. Id. To establish the existence of a conspiracy, proof of an express agreement is not necessary, and direct evidence is not essential, but the conspiracy may be sufficiently shown by circumstantial evidence and the conduct of the parties. State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998).

The State failed to prove an agreement between Appellant and anyone else to commit murder. In denying the directed verdict motion made by the brother co-defendant, the judge stated, "And I kind of kept a tally just because I knew it would be an important issue at this point. And I believe that based on the – all of the evidence when we look at the phone calls, the evidence of the testimony, evidence of Martin – again, I'm not to determine whether its credible or not – and all the evidence there, I believe that this is enough for this matter to go to the jury." (R. p. 500, lines 4-11). The text messages and telephone calls between the co-defendant brother, Jacob Hughes, and the shooter father, John Hughes, did not include Appellant. The State failed to establish that Appellant knew that her co-defendant brother was meeting with Ferrell on the evening prior to the shooting or that the father was trying to arrange a meeting with Ferrell at the house to work out the custody issue, as testified to by the boyfriend, Andrew Martin. (R. p. 312, lines 9-25). Wishing Ferrell was "just gone" and anger about custody issues is not evidence of an agreement. (R. p. 440, lines 12-14). Appellant's purported comment that she hit Ferrell with the hammer because her father hesitated is not evidence of an agreement. (R. p. 324, lines 18-19). The father's discussion about the "Castle Doctrine" and self-defense, as testified to by Martin, (R. p. 329, lines 5-14), is not evidence of an agreement. Circumstantial evidence and the conduct of the parties does not establish that Appellant unlawfully combined with Margaret Hughes and/or Jacob Hughes and/or John Hughes for the purpose of accomplishing an unlawful object or a lawful object by unlawful means, to wit: Murder, as alleged in the indictment.

Viewing the evidence in the light most favorable to the State, the State failed to present any direct evidence or any substantial circumstantial evidence reasonably tending to prove guilt of the accused. The trial judge erred in refusing to direct a verdict of acquittal on the conspiracy charge. This Court should reverse the conspiracy conviction.

3. The trial judge erred in refusing to grant trial counsel's motion to be relieved as counsel.

In January of 2015, prior to the April trial date, the Honorable Letitia H. Verdin heard a motion for a continuance and motion to be relieved as counsel, both filed by counsel for Appellant, Lauren M. Taylor. (R. pp. 1-17). Judge Verdin granted the continuance motion to allow trial counsel to obtain a transcript from a previous trial, presumably the father's trial. (R. p. 4, line 13 – p. 5, lines 1-7). Judge Verdin, however, denied the motion to be relieved as counsel. The judge erred.

During the hearing on the motion to be relieved counsel claimed that Appellant or a member of her family encouraged other detainees who were clients of counsel to file grievances against counsel with the Office of Disciplinary Counsel. (R. p. 5, line 22 – p. 6, p. 7, p. 8, lines 1-6). Trial counsel told the judge, "This is very concerning to me, as far as the conflict of the relationship that this has created. I think any amount of trust that existed between us that has, you know, occurred over the last two years is simply evaporated by this. It shows me that this is an intentional act, on either, you know, her family's part or hers, to publicly defame me and, you know, intentionally hurt my career." (R. p. 7, lines 11-20). Appellant denied the allegation and asked the judge to relieve counsel. (R. p. 8, lines 7-20).

In denying the motion to be relieved, the judge stated:

> Here's what I'm going to do, it puts Ms. Taylor in a horrible position – and Ms. Taylor, I understand the position that you are in – but Ms. Hughes, I am not going to relieve Ms. Taylor. She's an outstanding attorney. I'm not going to relieve her as your attorney because I want you to have the benefit of her experience. I want you to have the benefit of her know-how on your case and knowledge of your case. What I do want you to do, Ms. Hughes, is I want you to figure out ways to work with Ms. Taylor, to work out this problem that you've got with Ms. Taylor and discuss it with her.

(R. p. 13, lines 6-19). The judge also stated, "But here's what I'm going to say, to the extent that you did anything to harm Ms. Taylor – if you did, I – then my apologies to Ms. Taylor in asking her to continue as your attorney. This is probably the worse [sic] situation I've put an attorney in about this, but my understanding from our brief talk about this case is it is nearly three years old." (R. p. 14, lines 12-20). The age of the case is not justification to refuse to relieve an attorney who has accused her client or her client's family of defaming her and intentionally hurting her career. The judge abused her discretion in refusing to relieve counsel.

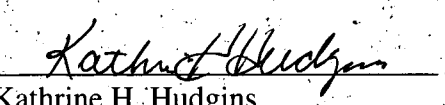
The Sixth Amendment right to effective assistance of counsel encompasses the right to representation by an attorney who does not owe conflicting duties to other defendants. Holloway v. Arkansas, 435 U.S. 475, 98 S.Ct. 1173, 55 L.Ed.2d 426 (1978). Where counsel is guaranteed, the client has the right to conflict-free representation. Cuyler v. Sullivan, 446 U.S. 335, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980). Violation of this principle is grounds for reversal. Id. A defendant need not demonstrate prejudice if there is an actual conflict of interest. State v. Gregory, 364 S.C. 150, 153, 612 S.E.2d 449, 450 (2005). The trial judge's refusal to relieve counsel violated Petitioner's Sixth Amendment right to conflict-free representation and the violation requires reversal. The conflict in the present case did not involve dual representation. Instead, the conflict existed directly between Appellant and counsel based on counsel's belief that Appellant and or family had encouraged other clients to file grievances.

The present case is distinguished from Richardson v. State, 377 S.C. 103, 659 S.E.2d 493 (2008), where the South Carolina Supreme Court found that the PCR judge properly denied the motion to be relieved as counsel. In Richardson the Court noted that a mere disagreement about strategy is not sufficient to relieve counsel. Additionally, the Court noted with regard to complaints filed with the Office of Disciplinary Counsel, the Court wrote, "We caution the bench

that the filing of a disciplinary complaint should not result in automatic removal of appointed counsel. If this were not the case, applicants could obtain substitute counsel by the simple expedient of filing an ethical complaint even if that complaint is without any factual or legal basis. Instead, the basis for the complaint should be explored and the PCR judge should exercise discretion in determining whether the basis for the complaint constitutes sufficient cause to relieve counsel." Richardson, 377 S.C. at 107, 659 S.E.2d at 495. The present case involves more than a mere disagreement in regard to strategy and involves more than Appellant filing a grievance. In the present case the attorney accused the client or her family of defamation and intentionally hurting her career. Both the attorney and the client asked the judge to relieve counsel. The judge had already granted a continuance which would have provided newly appointed counsel time to prepare. The judge erred in refusing to relieve counsel. The error is not harmless and requires reversal.

CONCLUSION

Based on the argument presented in issue one, this Court should reverse the murder conviction and remand for a new trial. Based on the argument presented is issue two, this Court should reverse the conspiracy conviction and remand the case to the trial court to direct a verdict of acquittal. Alternatively, based on the argument presented in issue three, this Court should reverse both convictions and remand for a new trial.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of September, 2019.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Final Brief of Appellant complies to the best of my ability with Rule 211 (b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

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This 17th day of September, 2019.