

ORIGINAL

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**Appeal from Greenville County
Perry H. Gravely, Circuit Court Judge**

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SC Court of Appeals

THE STATE,

Respondent,

v.

JANE KATHERINE HUGHES,

Appellant

Appellate Case No. 2018-000659.

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF THE ISSUES ON APPEAL

- I. 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?
- II. 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?
- III. Did the trial judge err in refusing to grant trial counsel's motion to be relieved as counsel?

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUES ON APPEAL

- I. Did the trial court properly deny Appellant's request for a jury instruction on assault and battery of a high and aggravated nature where Appellant was tried under an accomplice liability theory and where the batteries alleged in the indictment indisputably involved Appellant as a principal actor and led to the victim's death?
- II. Did the trial court properly deny Appellant's motion for directed verdict as to the conspiracy charge where testimony established Appellant acted with her family in planning and carrying out a murderous attack upon her estranged husband?
- III. Did the trial court properly deny defense counsel's motion to be relieved where Appellant and counsel failed to establish the existence of any actual conflict and where Appellant's filing of disciplinary complaints and disagreement with counsel are insufficient reasons for appointment of new counsel?

STATEMENT OF THE CASE

In June 2015, the Greenville County Grand Jury indicted Appellant Jane Katherine Hughes for the January 2015 murder of her estranged husband John Michael Ferrell and for possession of a weapon during the commission of a violent crime. (R. pp. 595-596). In June 2017, the Greenville County Grand Jury issued an additional indictment for conspiracy, alleging Appellant combined with one or more of Margaret, Jacob, and/or John Hughes in the commission of Ferrell's murder. (R. pp. 597-598).

Lauren Taylor, Esquire, represented Appellant on the charges. On January 5, 2018, Taylor moved to be relieved counsel before the Honorable Letitia H. Verdin. Judge Verdin denied Taylor's motion and set the matter for trial at the end of March. (R. pp. 1-16). Assistant Thirteenth Circuit Solicitor Mark Moyer prosecuted the case. (R. p. 18).

Appellant and her brother Jacob Hughes, a co-defendant indicted for the same charges, proceeded to a jury trial for murder and conspiracy beginning April 2, 2018. (R. p. 18). The State did not go forward on the weapons charge at trial. (R. p. 26, lines 7-10). The Honorable Perry H. Gravely presided. (R. p. 1). The jury convicted Appellant of murder and conspiracy. (R. p. 582, lines 10-13). Immediately following the trial, Judge Gravely sentenced Appellant to 30 years for murder and a concurrent five years for conspiracy. (R. p. 593, lines 10-16).

This appeal follows with notice being served April 9, 2018. (R. p. 601).

STATEMENT OF FACTS

Appellant Jane Hughes was going through a heated custody battle with her estranged husband John Ferrell. (R. p. 215, line 21 – p. 246, line 20). Jane and her two young children from her marriage with Ferrell lived with Jane's parents, John and Margaret (Renee) Hughes. Jane's new boyfriend Andrew Martin also lived with the Hughes family, and Jane's adult brother Jacob would stay at the family home on occasion as well. (R. p. 306, lines 15-24). At this time, Jane and Martin had been dating for nearly two years and had been living with the Hughes family for months. (R. p. 305, lines 11-23; R. p. 309, lines 2-12).

Martin described the custody dispute as causing the whole Hughes family to be "very anxious, very agitated," and displeased with the way it was going. (R. p. 309, lines 13-24). He described Jane as voicing concerns that Ferrell was on his way to gaining unsupervised visitations. (R. p. 310, lines 21-24; R. p. 311, lines 8-13; R. p. 312, lines 1-8). In late January 2015, a temporary hearing was fast approaching which Martin described as "the subject of much of" Jane, John, and Margaret Hughes's conversation. (R. p. 311, lines 14-25).

The Saturday before the family court hearing, Jane's father John asked Martin to stay "out of sight" while Ferrell came over to the Hughes's house "to meet with them about the custody case to work it out outside of court." (R. p. 312, line 9 – p. 313, line 15). So that night, January 24, Martin stayed outside in the Hughes's backyard with headphones in while Ferrell was expected to visit the family inside. (R. p. 313, line 22 – p. 314, line 18).

Martin, still sitting outside after an indeterminate period of time, "heard a loud crash" and "opened the door to investigate." (R. p. 315, lines 7-10). Martin entered the home through the sliding glass door in the living room to investigate and "saw framed in the kitchen entryway, 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 9-24). “The kitchen table was upside down.” (R. p. 316, line 4). “Ferrell had his hands around his face and seemed to be bleeding from the head.” (R. p. 317, lines 20-21). Jane wielded a hammer. (R. p. 317, line 22 – p. 318, line 2). John Hughes “was in a crouched position with a pistol pointed right at Ferrell,” who was saying “that he was prepared to die, go ahead and shoot.” (R. p. 318, lines 3-13; R. p. 319, lines 22-25).

Martin acted, approaching Jane and “pulling her back from that immediate scene in an attempt to get her to get on the phone with the police.” (R. p. 318, lines 19-23). Martin pulled Jane a few steps into the “hallway-foyer area” and “snatched” the hammer from her hand, tossing it “on the floor so that [he] didn’t get hit, and so she could call the police.” (R. p. 319, lines 6-8).

During this time, “Jacob began trying to tase Ferrell there in the room.” (R. p. 319, lines 15-21). With Jane’s call to 9-1-1 ongoing in the background, and Jacob attempting to tase him, Ferrell “struggled to stand and bolted” and tried to escape through the window in the adjacent kitchen. (R. p. 320, lines 3-11). In response, “John Hughes ran outside the house through the front door. And Jacob and [Margaret] Renee Hughes tried to keep Ferrell from going out the window” with both hands. (R. p. 320, lines 14-25).

Martin believed Ferrell made it out the window, the one over the kitchen sink, “because he didn’t go out the front door. And they found him outside on the side of the house.” (R. p. 321, lines 1-13). Next, Martin “heard John Ferrell beg for his life. And [he] heard him get shot to death” with several gunshots. (R. p. 322, lines 3-15).

Before the police arrived, Martin recalled Jacob going outside. He recalled Margaret Hughes going outside at the time the police arrived. (R. p. 321, lines 21-24). Inside the house, Margaret cleaned up: “[s]he had cleaning supplies in her hand and a rag, or a sponge, or something, kind of pattering around the kitchen.” (R. p. 323, lines 1-9). Jacob went outside and

then came back in, spending "a little bit of time in the kitchen helping to clean" before he went to the back of the house, Martin thought, "to the bathroom." (R. p. 323, lines 10-23). Martin seated himself in the foyer until police arrived and they were told to exit the house. (R. p. 323, line 25 – p. 324, line 1).

John Hughes reported to EMS as directed by law enforcement, but he refused transport, said he did not require any medical attention, and did not look to be in any distress or pain. (R. p. 134, lines 6-20). Jane, however, complained of a hurt wrist and requested transport to the hospital. Martin and law enforcement accompanied her there. (R. p. 70, lines 9-23; R. p. 324, lines 20-24). Prior to transport, EMS splinted Jane's wrist. There were no obvious signs of injury and she was able to move her hand, wrist, and fingers. (R. p. 132, line 13 – p. 133, line 23). Martin testified her hurt arm was the same arm she used to wield the hammer. (R. p. 325, lines 2-4).

Martin recognized the hammer, too, because Martin himself had previously pulled it from his and Jane's bedroom toolbox to hang pictures. (R. p. 327, lines 9-19). Martin also knew that John Hughes kept a pistol in a gun bag. (R. p. 326, lines 6-18). And he recognized the stun gun Jacob had used from when he once saw John Hughes "showing it off as a new acquisition." (R. p. 325, line 20 – p. 326, line 1). Martin later overheard Jacob say he had broken the taser up and flushed it down a toilet. (R. p. 326, line 19 – p. 327, line 8).

After several hours in an observation room at the hospital, Martin and Jane were taken back to the Hughes residence and to the police station. (R. p. 325, lines 11-19). Later, they were brought back to the residence. With law enforcement gone from the home, Martin heard "John Hughes emphasizing that the authorities couldn't know what went on inside the house. And if they didn't know what went on inside the house, then nobody would be in trouble." (R. p. 328,

lines 1-25). Prior to his arrest the following Wednesday, Martin returned to the Hughes's house, where "John Hughes reiterated a couple of times that the police, in his opinion, can't know or didn't know what went on inside the house." (R. p. 329, line 15 – p. 330, line 25). Martin took these statements to be "a veiled threat." (R. p. 331, lines 1-5).

* * *

Two neighbors heard some of the events Martin described transpire outside of the Hughes's home. The first one lived "one house and one street" over from the Hughes family. (R. p. 97, lines 20-24). He did not personally know the family but recognized them. (R. p. 98, lines 2-16). That night, the neighbor, who was inside watching TV, heard a noise that he initially believed to be a firework. (R. p. 98, lines 17-25). After about half a minute, he heard a series of bangs and then recognized that a gun was firing nearby. (R. p. 99, lines 3-5). He heard another pause and then "one final shot." (R. p. 99, lines 8-10). Stepping out onto his front lawn, the neighbor saw John Hughes, whose long white beard he recognized, "standing over the body with another person. They were talking, [he] shined his flashlight on the person on the ground, and then went back inside" and spoke with "some people" in the doorway. (R. p. 99, lines 16-21; R. p. 100, lines 3-5). The neighbor had his houseguest call 911 and walked towards the Hughes's home, observing a bloodied body lying on the ground and John Hughes holding a gun. The first responding officer approached him and asked him to return home. He later provided a statement. (R. p. 100, line 22 – p. 102, line 22; R. p. 114, lines 19-23).

Another neighbor sat on his porch "right around the corner" from the Hughes's house. (R. p. 106, lines 4-8). He also did not know anyone in the Hughes family. (R. p. 106, lines 9-24). That night at about midnight, he was sitting on his front porch on his phone when he heard a gunshot go off close to his home. He thought someone shot a neighborhood fox. (R. p. 107, lines

3-19). The he “heard somebody start screaming for help.” (R. p. 107, lines 21-22). Processing the connection between the gunshot and the screaming, the neighbor heard the screaming “getting more and more intense, [‘]please, God, help me, somebody, God, help me,[’] you know.” (R. p. 107, line 23 – p. 108, line 2). Next, after what seemed to the neighbor to be two minutes, he “heard a bunch of shots,” and then “never heard another word.” (R. p. 108, lines 3-5). He was frozen with fright and, with his wife, he watched the police arrive. (R. p. 109, lines 3-9). He did not share his account until sometime later because he had an outstanding warrant for his arrest at the time the shooting occurred. (R. p. 109, line 16 – p. 110, line 14).

* * *

Simpsonville police arrived four minutes after Jane’s call to 9-1-1. (R. p. 55, line 9; R. p. 60, lines 8-10). It was 11:58 P.M. (R. p. 60, lines 9-10). John Hughes approached the responding officer from the right side of the home. (R. p. 61, line 14 – p. 62, line 17). John Hughes nearly immediately directed the officer towards the victim. (R. p. 63, lines 10-15). Using his flashlight, the officer caught a glimpse of a body lying face down between John Hughes and the side of the house. (R. p. 63, line 17 – p. 64, line 4). Taking stock of the situation, the officer noticed matted hair and blood on the victim’s head and steam emanating from the body. (R. p. 66, lines 5-10). At that point, John Hughes advised the officer he had a gun, which the officer noticed in his right hand. The officer ordered John Hughes to drop the weapon and he complied. (R. p. 64, lines 5-25). The handgun was a .45 caliber Glock 21 with a 14-round capacity. (R. p. 67, lines 2-18).

The officer placed John Hughes in investigative detention. (R. p. 65, lines 16-18). Margaret Hughes came outside and “just kind of stood there” next to her husband John Hughes. (R. p. 68, lines 1-11). Jane, her brother Jacob, her boyfriend Andrew Martin, and her two children were all inside the house and stayed there until the police ordered their exit. (R. p. 69,

lines 12-25).

Another officer approached the victim, checked for a pulse to no avail. (R. p. 87, lines 14-18). He observed the victim was face down with his left hand by his side and his right hand up near his head. (R. p. 87, lines 22-25). He observed trauma to the back of the victim's head and a pool of blood below his face. (R. p. 88, lines 6-11). There were no weapons around the victim. (R. p. 89, lines 3-5). A trail of blood stretched from the victim's feet back to the window near the standard air conditioning unit. (R. p. 90, lines 22-25). Another window fan unit had been knocked away from the window and was lying on the ground. (R. p. 91, lines 8-12).

Examining the scene for items of possible evidentiary value, the officer observed and marked two shell casings located an estimated ten feet from the victim's head. (R. p. 89, lines 11-25). Another officer located and marked a total of five .45 automatic cartridge casings in the Hughes's front yard. (R. p. 152, line 24 – p. 153, line 12). A set of keys found on the ground outside near the kitchen window and the victim's body were photographed then removed so that the victim's vehicle, to which the keys belonged, could be towed. (R. p. 75, lines 5-16). Law enforcement also observed "some specks of blood around the exterior of the kitchen window frame and at the bottom of the kitchen window blinds." (R. p. 155, lines 2-4). More "suspected blood was observed" on the top of the exterior trash can. (R. p. 162, lines 1-2).

Investigators found that the victim indeed came through the kitchen window to the ground below. (R. p. 77, lines 16-18). Law enforcement measured the kitchen window and other related distances in order to assess the feasibility of a break-in. (R. p. 484, lines 16-25). They determined the kitchen window was just shy of six feet from the ground. (R. p. 484, lines 2-4). The window itself measured 30.75 inches wide and 15.25 inches high when fully opened. (R. p. 484, lines 5-8). There was another window near it on the side of the house, however, that was

only three feet and eleven inches from the ground. (R. p. 484, lines 18-21).

Inside, an officer observed suspected blood on a wooden utensil in the kitchen sink, on the area above the under-sink cabinet doors, on both sides of the head of a hammer on the kitchen floor, and on a patterned blanket near the dining table. (R. p. 166, lines 11-20; R. p. 178, line 21 – p. 182, line 2). Law enforcement observed a pouch for a handgun sitting on the sofa in the living room. (R. p. 166, line 25 – p. 167, line 1). Law enforcement also noted “a large assortment of documents and paperwork located on a table in the kitchen that were all spread out and placed in manila envelopes.” (R. p. 485, lines 5-7). They contained organized documents produced in relation to the family court action. (R. p. 485, lines 12-15).

As they worked the interior scene, the officers noticed the kitchen floor “kind of had a sticky texture to it” and that “everybody that walked in the kitchen was leaving boot impressions” on the floor. (R. p. 174, lines 12-15). This led the officer processing the scene to utilize a presumptive test for blood by spraying various surfaces with leuco crystal violet (LCV). (R. p. 172, line 10 – p. 174, line 16). The presumptive test indicated the presence of blood on the edges of the kitchen floor, on the kitchen table, on the foyer wall where one officer noticed suspected blood, and on the hallway bathroom sink. (R. p. 174, line 20 – p. 175, line 6). Officers collected a damp rag from the interior kitchen trash can that also reacted positively to an on-scene presumptive test for the presence of blood. (R. p. 175, lines 9-12; R. p. 183, lines 12-25). They also seized an empty bleach bottle from the exterior trashcan. (R. p. 484, line 25 – p. 485, line 2).

A serologist with Greenville County Department of Public Safety recorded a number of items from the Hughes residence swabbed and sampled for DNA analysis due to the presence of suspected blood: kitchen window blinds; a blanket; a hammer; a blue hand towel from the

kitchen trash can; pants collected from Jane Hughes; a shirt collected from Jane Hughes; the grip and trigger of a Glock .45 caliber gun; a pair of pants collected from the victim; a pair of boxers collected from the victim; a shirt with a torn hem collected from the victim; fingernail clippings collected from the victim; a reference sampling taken from a spot of the victim's blood; and reference samplings taken from buccal swabs of Andrew Martin, Jane Hughes, Margaret Hughes, Jacob Hughes, and Appellant John Hughes. Upon each of the non-reference samples, the serologist examined reddish-brown stains and conducted a presumptive test with phenolphthalein to see if they returned positive results for the presence of blood. Most of them did. (R. p. 259, line 9 – p. 269, line 1; R. p. 274, lines 2-10).

A series of results obtained from DNA analysis conducted on the serologist's samplings confirmed that the victim's blood appeared on the swabs sampled from the kitchen blinds, the quilt, the hammer, the blue towel from the kitchen trash can, Jane Hughes's pants and T-shirt, and the clothing and biological material collected from his person. (R. p. 283, line 12 – p. 292, line 25). Jane Hughes was a minor contributor to DNA sampled from the hammer handle. (R. p. 286, lines 2-11). Though neither were a definitive match, Jane Hughes and Jacob Hughes could not be excluded as possible trace contributors to the samples from Jane Hughes's pants and T-shirt. (R. p. 288, line 15 – p. 290, line 9). The serologist opined it was "probably both of them" based upon the applicable science. (R. p. 295, line 10 – p. 296, line 4).

* * *

At the scene, the victim had no weapon on his person, only a cell phone, some cash and credit cards, and other personal papers. (R. p. 368, line 25 – p. 369, line 4). The victim was dressed in a jacket, jeans, boxer shorts, socks, and shoes. (R. p. 368, lines 8-12). The victim was wearing the jacket, but "[t]he pants and his underwear were, actually, below his buttocks" at his

ankles. (R. p. 88, lines 15-18; R. p. 332, lines 10-12). The black leather jacket and shirt had bullet holes. (R. p. 141, lines 14-15). The shirt also had bullet holes, and the hemline of the shirt had been ripped off at least halfway around. (R. p. 141, lines 21-23; R. p. 143, lines 5-22; R. p. 449, lines 3-5). The bullet holes corresponded with the gunshot wounds the victim sustained to his upper body. (R. p. 141, lines 14-18). But "interestingly, there were no holes in the pants, despite the fact that the decedent had been shot in the leg." (R. p. 368, lines 16-20). In fact, the victim's boxers were only around the right leg, yet his pants were around both legs, with both articles of clothing pulled down to his ankles and a visible gunshot wound to the upper part of his right thigh. (R. p. 160, lines 7-25; R. p. 371, line 11).

At autopsy, the forensic pathologist noted several points regarding the victim's health prior to the shooting, including obesity, emphysema, an enlarged heart, an enlarged liver with fatty deposition, and coronary artery disease, each of which caused the victim to be in "fairly poor health" with a significantly reduced ability to exercise. (R. p. 369, line 9 – p. 370, line 21). A toxicology report showed that the victim's blood-alcohol content was .116 and that he had no other illicit substances in his system. (R. p. 383, lines 6-10; R. p. 384, lines 10-23).

Separate and apart from these observations, the pathologist recorded that the victim died from "multiple gunshot wounds to the torso." (R. p. 371, lines 2-3). There were six total wounds: "four in the torso, one in the head, and one in the right thigh." (R. p. 371, lines 10-11). One shot struck the victim through his right eye, another straight down through the left side of his neck, another clear through the shoulder and back through the front of his right thigh, still another through the other front shoulder through to the pulmonary artery, and yet another to the back right shoulder. Each shot was fired from at least several feet away and at a downward trajectory. (R. p. 372, line 5 – p. 379, line 6). The pathologist opined that one bullet probably passed

through the chest and re-entered the leg, meaning that the victim sustained five separate gunshots. (R. p. 374, line 21 – p. 375, line 11). He opined that the most fatal of the shots was the one that entered the shoulder above the clavicle and proceeded straight through the victim's heart. (R. p. 378, lines 22-25).

The victim sustained additional blunt-force trauma to the head. (R. p. 371, line 7). The multiple contusions and lacerations existed in two distinct patterns: semi-circular and evenly spaced rectilinear. These contusions and lacerations, which significantly overlapped atop the victim's head, were each consistent with a hammer. (R. p. 380, line 14 – p. 382, line 19). Chips had been taken from the victim's skull. (R. p. 381, lines 2-7). The forensic pathologist also recorded a fractured jawbone associated with trauma from a hammer claw. (R. p. 381, line 25 – p. 382, line 5).

* * *

As to events occurring prior to January 24, 2015, the family court had appointed a guardian ad litem to the child custody case pending between the victim and Jane Hughes. The victim had, for a time, lived in California with the two children and was granted full custody of the eldest child in that State. He sought enforcement of that order in South Carolina as well as full custody of the younger child. (R. p. 233, line 20 – p. 234, line 25). Shortly prior to this incident, the appointed guardian had completed her report on the case and had noticed an expedited hearing regarding a missed visitation which the family court set for January 27, 2015. (R. p. 235, line 8 – p. 238, line 22). The guardian ad litem sent notice of the hearing on January 20, 2015. (R. p. 238, lines 19-20). Jane was proceeding in the matter pro se. (R. p. 235, lines 3-6). The guardian ad litem assigned to the case opined that both the parents and the grandparents, the Hughes, "had some issue with boundaries" as it related to the ongoing visitations and court

proceedings. (R. p. 236, lines 12-15).

The guardian's report and notice of the expedited hearing caused the Hughes family to seek guidance from a member of their church. Christine Boisher was a guardian ad litem with no involvement or attachment to the pending family court matter, and she made time to meet with the Hughes at their home about a month prior to the incident. (R. p. 415, line 12 – p. 417, line 21). She and her husband visited with John, Margaret, Jane, and Jane's boyfriend Martin. (R. p. 417, lines 23-25). Boisher viewed her role as one offering comfort to the family, who was going through an experience with which she had her own familiarity. (R. p. 418, lines 6-10). Yet they continued to bring up problems they had with the victim. (R. p. 418, lines 10-12). Jane Hughes was "very upset," crying and wanting "to know if she was going to lose her kids." (R. p. 438, lines 10-13). "She talked about how she would take the kids to school to make sure that Mr. Ferrell didn't try to take them. She was just very distraught about losing the kids to Mr. Ferrell. She said that she just couldn't – she just couldn't lose her children." (R. p. 438, lines 14-18).

Boisher returned to the Hughes's house the night before the victim's death. (R. p. 438, line 24 – p. 439, line 2). Boisher arrived around 7:00 P.M. and did not depart until about 2:00 A.M. that Friday night. (R. p. 439, lines 3-11). The meeting included Boisher and her husband, John, Margaret, Jane, and Martin. (R. p. 439, lines 13-14). This time, Jane "was more angry" and "more vocal" and Boisher was informed "they were getting ready to go to court on Tuesday." (R. p. 439, lines 16-23). Jane "was adamant that Mr. Ferrell not get these children. I mean, she really didn't give any good solid reasons why. She just didn't want him to have the kids." (R. p. 440, lines 4-6). Sitting beside Jane, Boisher heard Jane wish the victim gone. "Things would be so much easier if he was just gone," Jane said, "[a]nd everybody chuckled" in response. (R. p. 440, lines 10-14).

Martin recalled similar talk from the Jane and John Hughes. Prior to the actions that night, Martin had heard John Hughes “regularly” talk about self-defense and the Castle Doctrine. (R. p. 329, lines 5-14). He also heard Jane Hughes speak negatively about Ferrell. He “gathered that she felt her life and the children’s lives would be better and easier if he weren’t in the picture.” (R. p. 331, lines 6-22).

Additionally on the night before this incident, someone in the Hughes family called law enforcement to their residence for a security check. John Hughes approached the responding officer, who parked her blacked-out patrol car at the end of the cul-de-sac to observe as requested, to ask if she had seen anything. The officer had not. John Hughes thanked the officer for standing by. (R. p. 122, line 19 – p. 124, line 17).

* * *

John texted Jacob two days before the killing that they “need to discuss dessert . . . ‘revolution is the solution.’” (R. p. 461, lines 18-25). The night of the killing, John and Jacob Hughes communicated throughout the evening. (R. p. 460, lines 18-20; R. p. 461, lines 3-23). Jacob texted John at 10:03 P.M. on January 24 telling John to call him when he was “ready for pie.” (R. p. 462, lines 1-9). John confirmed at 10:04 P.M. with a “will do” text. (R. p. 462, lines 11-15). Thirty-seven minutes later John texted Jacob “almost.” (R. p. 462, lines 17-22). Fourteen minutes later from John to Jacob: “just a few more minutes,” and then another at 11:03 P.M. asking for Jacob to call him. Each of these last four texts also concluded with “green dragons and elm trees.”¹ (R. p. 462, line 24 – p. 463, line 10). Finally, Jacob and John exchanged a series of four brief phone calls between 9:47 and 11:27 P.M. (R. p. 463, line 14 – p. 464, line 7).

That night, Jacob met the victim at a Simpsonville bar where they chatted for almost

¹ Presumably indicating the repetitive use of identical emojis.

three hours. (R. p. 456, line 23 – p. 457, line 24). Jacob and the victim were friendly, sometimes working together and sometimes hanging out together. (R. p. 362, lines 8-17). They left the bar together and went to the Waffle House about two miles from the Hughes's house. (R. p. 450, line 6 – p. 451, line 24). "They seemed cordial." (R. p. 452, line 7). They left the Waffle House together in the victim's car at 11:20 P.M. (R. p. 456, lines 10-12). Jane called 9-1-1 at 11:54 P.M. (R. p. 55, line 9).

* * *

In Jane's call to 9-1-1, she announces to the dispatcher that her husband's trying to kill her. (State's Exhibit 94, file "(1) 01-24-2015 23.54.04 911-3.wav," at 0:22 to 0:25 and 0:57 to 1:00). Before anyone picks up the phone, she asks, "where's my hammer?" (*Id.* at 0:10 to 0:14). Awaiting transfer to another dispatcher, Jane can be heard asking, "where is he?" She instructs others to "get to him," repeating "we gotta get him." (*Id.* at 0:42 to 0:47). She tells the second dispatcher her husband, John Ferrell, had broken into the house and tried to kill her. (*Id.* at 2:04 to 3:05).

Then, incongruently, Jane answers the dispatcher that "he escaped out the kitchen window." (*Id.* at 3:20 to 3:25). When the dispatcher asks whether he had a gun (because she had also received reports of gunshots), Jane answered, "he didn't have anything that I saw" even though she had earlier reported he was trying to kill her and she had blood on her. (*Id.* at 3:35 to 4:04). She said she had been asleep with the kids. (*Id.* at 4:04 to 4:15). She said he hit her and pushed the dining room table on her. (*Id.* at 4:45 to 4:54).

Two days later, at a hotel in Greenville where Jane and Martin were put up by family friends, Jane told Martin "she did it because her dad hesitated. And that she did what she had to do to protect her family." (R. p. 324, lines 14-19).

STANDARD OF REVIEW FOR ISSUE I

“The law to be charged must be determined from the evidence presented at trial.” *State v. Brayboy*, 387 S.C. 174, 179, 691 S.E.2d 482, 485 (Ct. App. 2010). This Court reviews a jury charge “as a whole in light of the evidence and issues presented at trial,” *State v. Brandt*, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011), and “in a light most favorable to the defendant.” *State v. Brayboy*, 387 S.C. at 180, 691 S.E.2d at 485. “A trial court commits reversible error when it fails to give a requested charge on an issue raised by the evidence presented.” *State v. Smith*, 391 S.C. 408, 412, 706 S.E.2d 12, 14 (2011). However, a requested charge is properly refused when “there is no evidence that the defendant committed the lesser offense rather than the greater offense.” *State v. Brayboy*, 387 S.C. at 180, 691 S.E.2d at 485. Further, “[i]t is not error to refuse to charge the lesser included offense unless there is evidence tending to show the defendant was guilty *only* of the lesser offense.” *State v. Coleman*, 342 S.C. 172, 175, 536 S.E.2d 387, 389 (Ct. App. 2000) (emphasis in original).

- I. The trial court properly refused to charge the jury on the lesser offense of ABHAN because there is no evidence tending to show Appellant was guilty only of ABHAN and because ABHAN is not an appropriate lesser-included offense of murder given the facts.**

Appellant requested a jury instruction on assault and battery of a high and aggravated nature (ABHAN) as a lesser-included offense of murder. (R. p. 393, lines 19-24). Appellant argued that the State produced sufficient evidence to establish that the cause of the victim’s death was a particular gunshot wound inflicted John Hughes rather than Appellant. (R. p. 507, lines 18-25). The court denied the request to charge, evaluating ABHAN as “a totally separate issue and . . . a separate charge. It would not be a lesser included offense of the charges here.” (R. p. 507, lines 6-15; R. p. 508, lines 1-3).

According to the testimony presented at trial, John Hughes shot the victim after Appellant wielded a hammer and struck him several times in the head. (R. p. 317, line 22 – p. 318, line 2; R. p. 320, line 14 – p. 322, line 15). Between the hammer blows and the gunshots, the victim escaped out the kitchen window and Appellant could be heard on the 9-1-1 recording instructing another person “we gotta get to him.” (R. p. 319, line 6 – p. 322, line 15; State’s Exhibit 94, file “(1) 01-24-2015 23.54.04 911-3.wav at 0:42 to 0:47). The forensic pathologist testified that the victim sustained six gunshot wounds. (R. p. 371, lines 8-11). He identified one gunshot wound as “the most mortal” of the six because it punctured the victim’s pulmonary artery and aorta. (R. p. 376, lines 1-17). The forensic pathologist also testified that the victim sustained several head contusions, a chipped skull, and a broken jaw, all caused by being struck by both ends of a hammer-head. (R. p. 380, line 14 – p. 382, line 11).

Murder is the killing of another with malice aforethought. S.C. Code Ann. § 16-3-10. Appellant’s requested ABHAN charge “requires an unlawful act of violent injury accompanied by circumstances of aggravation” such as “the use of a deadly weapon, the infliction of serious bodily injury, the intent to commit a felony, great disparity between the ages and physical conditions of the parties involved, and the difference in the sexes.” *State v. Coleman*, 342 S.C. at 176, 536 S.E.2d at 389; S.C. Code Ann. § 16-3-600(A)-(B). Appellant argues that she did not strike the fatal blow and was entitled to the ABHAN instruction because she could be found culpable of ABHAN rather than murder. (Br. of App. at 10). But Appellant cannot prevail by focusing on one mortal wound to the exclusion of the remainder of the evidence.

“The mere contention that the jury might accept the State’s evidence in part and reject it in part is insufficient to satisfy the requirement that some evidence tend to show the defendant was guilty only of the lesser offense.” *State v. Geiger*, 370 S.C. 600, 608, 635 S.E.2d 669, 674

(Ct. App. 2006) (collecting cases finding same). “It is not error to refuse to charge the lesser included offense unless there is evidence tending to show the defendant was guilty *only* of the lesser offense.” *State v. Coleman*, 342 S.C. at 175, 536 S.E.2d at 389 (emphasis in original). Here, the evidence cannot support a conclusion that Appellant was guilty only of ABHAN rather than murder. Appellant was prosecuted for murder under an accomplice liability theory. (E.g., R. p. 571, line 8 – p. 572, line 17). “Where two persons combine to commit an unlawful act and in its execution a homicide is committed as a probable or natural consequence thereof, all present and participating in the unlawful act are as guilty as the one who committed the fatal act.” *State v. Harry*, 413 S.C. 534, 540, 776 S.E.2d 387, 391 (Ct. App. 2015), *aff’d*, 420 S.C. 290, 803 S.E.2d 272 (2017) (quoting *State v. Fields*, 31 S.C. 144, 146 n.1, 442 S.E.2d 181, 182 n.1 (1994)); *State v. Condrey*, 349 S.C. 184, 194, 562 S.E.2d 320, 324 (Ct. App. 2002) (similarly defining “hand of one, hand of all” theory). The person charged as the accomplice “must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act.” *State v. Langley*, 334 S.C. 643, 648-49, 515 S.E.2d 98, 101 (1999).

The record as a whole contains no evidence tending to show Appellant did not act as an accomplice with the remainder of the Hughes family in the killing and covering up of the murder. The record also fails to demonstrate Appellant lacked the malice requisite to murder rather than ABHAN. See *State v. Fennell*, 340 S.C. 266, 275, 531 S.E.2d 512, 517 (2000) (“[T]he circumstances that give rise to ABHAN may also give rise to an inference of malice. Thus, a defendant may be convicted of ABHAN regardless of whether malice is present.”). The record instead shows that Appellant took part with another to accomplish the killing when she assaulted the victim with the hammer in the manner described by the forensic pathologist and

then told another to “get to him” when he escaped out the kitchen window. The hammer blows inflicted by Appellant more than portend the gunshots to come. At the time Appellant levied the blows, the shooter, John Hughes, was “in a crouched position with his pistol pointed right at” the victim. (R. p. 318, lines 6-7). Appellant told her boyfriend two days later that “she did it because her dad hesitated,” indicating the plan was for her father to shoot and kill the victim but he wavered and Appellant stepped in with the hammer. (R. p. 324, lines 14-19). Conversely, there is no evidence Appellant stepped into the situation alone, hit the victim on the head a few times, and then removed herself from the remainder. Therefore, the trial court did not err when it refused to charge ABHAN as a lesser-included of murder. *E.g. State v. Geiger, supra.*

The trial judge’s refusal to charge also comports with the holding in *State v. Fields* in a manner contrary to that presented by Appellant. *Fields* held that “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.” *State v. Fields*, 314 S.C. at 145, 442 S.E.2d at 182 (1994); *accord State v. Holmes*, 320 S.C. 259, 267, 464 S.E.2d 334, 338 (1995). *Fields* “was charged with murder for his alleged participation in the victim’s beating” and there was “no dispute that the victim died as a result of the beating alleged in the indictment.” *Id.* The *Fields* court declined to find that ABHAN was a lesser included offense of murder in that scenario. *Id.*

Here, the record leaves no dispute as to Appellant’s involvement in the aggregate chain of actions that, as indicted, caused the victim’s death. Both the assault with the hammer and the shooting are alleged in Appellant’s indictment. (R. pp. 595-596). The hammer assault was concurrent to John Hughes’s bearing down on the victim with a pistol. (R. p. 315, line 21 – p. 318, line 7). The assault caused the victim to escape from the scene and John Hughes and the Appellant in turn reacted as accomplices in fatal shooting: Martin urged Appellant to call 9-1-1

wherein she can be heard instructing others to “get” the victim, and John Hughes ran out the front door with his handgun and shot the victim who begged for his life. (R. p. 318, line 19 – p. 322, line 20).

Appellant was indicted and tried under the theory of the hand of one is the hand of all, was not merely present at the scene, and by all accounts took part with the confederate in the events causing the victim’s death. The fact that Appellant wielded the hammer and not the pistol does not dissolve her culpability as an accomplice to the undisputed batteries alleged in the indictment. *State v. Harry, supra*; *State v. Fields*, 31 S.Ct. at 146 n.1, 442 S.E.2d at 182 n.1; see *State v. Dickman*, 341 S.C. 293, 295, 534 S.E.2d 268, 269 (2000) (“It is well-settled that a defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense.”). To focus, as Appellant does, on a sole gunshot wound is to remain blind to the remainder of Appellant’s actions as an accomplice in the end result. Rather, the situation is analogous to *Fields* and the ABHAN instruction was not warranted. Moreover, since the record also fails to reflect that Appellant was guilty *only* of the lesser offense of ABHAN, it was not error to refuse the requested instruction. *State v. Geiger, supra*.

STANDARD OF REVIEW FOR ISSUE II

“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. Butler*, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014). The trial court should deny a motion for directed verdict as to any charge when “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. Phillips*, 416 S.C. 184, 193, 785 S.E.2d 448, 452 (2016) (quoting *State v. Littlejohn*, 228 S.C. 324, 329, 89 S.E.2d 924, 926 (1955)). “In reviewing a motion for directed verdict, the trial court is concerned with the existence of evidence, not with its weight.” *Id.* at 192, 785 S.E.2d at 452. While “the jury must consider alternative hypotheses, the court must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt.” *State v. Bennett*, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016) (emphasis in original).

II. The trial court correctly denied Appellant’s directed verdict motion as to the conspiracy charge because testimony established Appellant acted with at least one other family member in planning and carrying out a murderous attack upon the victim.

Appellant moved for a directed verdict on the basis that the State failed to present evidence that Appellant engaged in a conspiracy with family members prior to the shooting. (R. p. 499, lines 6-9). Considering the evidence in the light most favorable to the State, the trial court denied the motion. (R. p. 499, lines 10-12; R. p. 500, lines 4-11). This ruling finds support in the record laid by the State.

“A conspiracy is a combination or agreement between two or more persons for the purpose of accomplishing a criminal or unlawful object, or of achieving by criminal or unlawful means an object that is neither criminal nor unlawful.” *State v. Sims*, 377 S.C. 598, 606, 661 S.E.2d 122, 126 (Ct. App. 2008), *aff’d*, 387 S.C. 557, 694 S.E.2d 9 (2010) (internal quotations

and citations omitted). “The essence of a conspiracy is the agreement.” *State v. Buckmon*, 347 S.C. 316, 323, 555 S.E.2d 402, 405 (2001). It must be shown that the defendant is connected to the conspiracy and “intended to act together [with at least one other] for their shared mutual benefit within the scope of the conspiracy charged.” *State v. Sims*, 377 S.C. at 607, 661 S.E.2d at 126 (internal quotations and citations omitted). An overt act is not required. *Id.* at 606, 661 S.E.2d at 126. Neither is proof of an express agreement. *State v. Buckmon, supra*. Also, “direct evidence is not essential, but the conspiracy may be sufficiently shown by circumstantial evidence and the conduct of the parties.” *Id.* Conspiracy “may be proven by the specific overt acts done in furtherance of the conspiracy but the crime is the agreement.” *Id.*

Here, the scope of the conspiracy was an agreement among one or more members of the Hughes family to do away with the victim and thus unlawfully procure custody of Jane’s children.² John Hughes told Martin that he was arranging for the victim to come to their house to resolve the child custody case “out of court.” (R. p. 312, lines 19-25). Martin was instructed to sit outside “so as not to be a detriment to the custody case.” (R. p. 313, lines 1-25). Jacob and John Hughes exchanged calls and text messages to coordinate the victim’s arrival at the Hughes’s home. (R. p. 460, line 18 – p. 464, line 7). The messages included repetitive usage of “green dragons and elm trees” which may be interpreted as code for the plan against the victim. In what may be circumstantially discerned as more coded communication, the Hughes men referenced “dessert,” and Jacob asked John to signal when he was “ready for pie.” (R. p. 461, lines 18-25; R. p. 462, lines 1-9).

² To the extent Appellant’s argument relies upon the evidence cited by the trial court when it ruled on her co-defendant’s directed verdict motion, a criminal defendant cannot utilize a co-defendant’s objection at trial to raise an issue on appeal. *See State v. Carriker*, 269 S.C. 553, 238 S.E.2d 678 (1977) (while appellant’s codefendant did object, the appellant may not utilize the objection of another defendant to gain review).

Then Martin walked in, uninvited, to witness Jane, Jacob, and John each engage in a role in the attack upon the victim. (R. p. 315, lines 9-24). Jane repeatedly and violently assaulted the victim over the head with a hammer, which was corroborated by the forensic pathologist's autopsy examination. (R. p. 317, line 22 – p. 318, line 2; R. p. 380, line 14 – p. 382, line 19). John held a gun to the victim inside the home. (R. p. 318, lines 3-13). Jacob aimed a taser at the victim. (R. p. 319, lines 15-21).

According to Martin, the attack caused the victim to attempt escape out the kitchen window, Jacob and Margaret tried to keep him from doing so, and John ran outside with his handgun and shot and killed the victim, who could be heard begging for his life. (R. p. 107, line 23 – p. 108, line 2; R. p. 320 line 14 – p. 322, line 15). The way the victim was found at the scene with his pants around his ankles corroborates Martin's account. (R. p. 160, lines 7-25; R. p. 371, line 11).

After the shooting Margaret, the matriarch of the family, cleaned up inside the home. (R. p. 323, lines 1-9). The forensic evidence corroborates that the scene was bloodied with the victim's blood and then wiped. (R. p. 174, line 20 – p. 175, line 6; R. p. 175, lines 9-12; R. p. 183, lines 12-25; R. p. 259, line 9 – p. 269, line 1; R. p. 274, lines 2-10).

Yet given this evidence, Jane's contemporaneous call to 911 stated that her husband had tried to kill her and "escaped" out the kitchen window. (State's Exhibit 94, file "(1) 01-24-2015 23.54.04 911-3.wav"). Jane made the call at Martin's intervention and behest. (R. p. 319, lines 6-8). However, before the dispatcher chimed in on the call, Jane can be heard instructing others in the house to "get him." (*Id.* at 0:42 to 0:47).

After the incident, Jane verbally indicated to Martin that she agreed to act in a certain way when she told Martin that "she did it because her dad hesitated. And that she did what she

had to do to protect her family.” (R. p. 324, lines 14-19).

Jane also took part in a family meeting with church member Christine Boisher the night before the killing, wherein Jane angrily stated that life “would be so much easier” if the victim was gone because she did not want him with the children. Boisher recalled that “everybody chuckled” in response to Jane’s statement. (R. p. 439, line 16 – p. 440, line 14). This was the second such meeting Jane and her family had with Boisher in which Jane expressed distress over the possibility of losing her children to the victim. (R. p. 438, lines 10-18). Moreover, Jane spoke freely to Martin in a manner indicating she did not want the victim in her and her children’s lives. (R. p. 331, lines 6-22).

Also by Martin’s account, John Hughes “regularly” discussed the concept of self-defense and the Castle Doctrine. (R. p. 329, lines 5-14). John also issued at least two “veiled threat[s]” to Martin, telling him prior to anyone’s arrest that “the police can’t know or don’t know what went on inside the house” so that “nobody would be in trouble.” (R. p. 328, lines 1-26; R. p. 329, lines 15 – p. 330, line 25).

The record contains substantial circumstantial evidence that members of the Hughes family agreed to act together to get rid of the victim in order to ensure he could not win the child custody battle. The circumstantial evidence fulfills the elements of the conspiracy charge. *State v. Buckmon, supra*. Evidenced by text messages, surveillance videos from the nearby bar and Waffle House, and Martin’s eyewitness account, Jacob lured Ferrell to the Hughes’s home to discuss the upcoming custody hearing. (R. p. 456, line 10 – p. 457, line 24). As described herein, Martin witnessed Jane, John, and Jacob act in concert to attack and ultimately kill the victim. It can additionally be adduced from the totality of this evidence that Jane and her family agreed to misrepresent what actually occurred in the home that night in an effort to claim immunity from

prosecution. Accordingly, the trial court correctly denied Appellant's motion for a directed verdict as to conspiracy.

STANDARD OF REVIEW FOR ISSUE III

“[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 abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). “The movant bears the burden to show satisfactory cause for removal.” *State v. Childers*, 373 S.C. 367, 372, 645 S.E.2d 233, 235 (2007). The motion is properly denied where the movant fails to demonstrate “his counsel had any divided loyalties or an actual conflict of interest.” *Id.*

III. The trial court correctly denied Appellant’s motion to relieve counsel because Appellant failed to establish the existence of any actual conflict and because Appellant’s filing of disciplinary complaints and disagreement with counsel do not give cause to require the removal of counsel.

Three months prior to trial, defense counsel moved for a continuance and also to be relieved. The presiding judge granted a continuance because trial counsel was awaiting receipt of the transcript she had ordered from a co-defendant’s earlier trial. (R. p. 4, line 13 – p. 5, line 6). Moving to the motion to be relieved, defense counsel cited a conflict of interest which she attributed to complaints made by Appellant and others to the Office of Disciplinary Counsel (ODC). Counsel was informed by a grouping of clients that “either Ms. Hughes or a direct member of her family” coerced the filing of “multiple bar complaints” concerning counsel’s representation. (R. p. 5, line 11 – p. 6, line 14). She enumerated that four complaints had been filed in a two-month period. (R. p. 6, lines 23-25). Crucially, by the time of the motion hearing, each of the disciplinary complaints had been ruled upon by ODC and, as represented by counsel, ODC issued “absolutely no finding whatsoever against” her. (R. p. 6, lines 15-20).

Appellant, however, denied encouraging other clients to file grievances. (R. p. 8, lines 7-13). Appellant asked that counsel be relieved on the basis that they had a difference of opinion over the calling of witnesses and their preparedness to proceed to trial. (R. p. 8, line 14 – p. 10, line 24).

The court denied the motion, but not until discussing (1) counsel's experience and "some measure of notoriety throughout the bar" as a successful criminal defense attorney; (2) that the court had continued the trial for a bit longer than 60 days so that counsel had time to receive and examine Appellant's co-defendant's trial transcript; (3) that Appellant's difference of opinion over trial strategy is "not in any way unethical behavior or deficient performance" by trial counsel; (4) that would be a "horrible detriment" to Appellant to change trial counsel at this juncture; (5) that a change in counsel would also put off trial for another period of time when the case was already three years old; and (6) and that further continuing the case to allow new counsel to get up to speed was contrary to Appellant's statement she was "ready for this to come to closure." (R. p. 11, line 3 – p. 15, line 21). The court also apologized to counsel for putting her in this position if Appellant indeed caused her harm. (R. p. 14, lines 12-20).

Appellant did not protest the court's ruling and appeared to agree to counsel's continued representation given the court's timeline of the impending trial, the court's recitation of confidence in current counsel's performance and ability to prepare for trial, and the court's instruction that Appellant "figure out ways to work with" and better communicate with current counsel. (R. p. 11, line 3 – 15, line 21). Likewise, counsel did not protest the ruling, nor did counsel any more succinctly define how the perceived conflict prohibited her from continuing to ethically and ardently represent Appellant. Instead, counsel asked for a trial date. (R. p. 15, lines 3-10).

Appellant's cited causes for removal of counsel do not form a basis for reversal. "An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant's." *State v. Gregory*, 364 S.C. 150, 152, 612 S.E.2d 449, 450 (2005). "The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction." *Id.* (citing *Langford v. State*, 310 S.C. 357, 359, 426 S.E.2d 793, 795 (1993); *Cuyler v. Sullivan*, 446 U.S. 335, 100 S.Ct. 1708 (1980) (right to conflict-free assistance of counsel). An actual conflict occurs ". . . when a defense attorney places himself in a situation inherently conducive to divided loyalties" among two or more clients. *Duncan v. State*, 281 S.C. 435, 438, 315 S.E.2d 809, 811 (1984); Rule 1.7(a)(1), Rule 407, SCACR (concurrent conflict exists if "the representation of one client will be directly adverse to another client").

A concurrent conflict may also exist if "there is a significant risk that the representation of one or more clients will be materially limited by . . . a personal interest of the lawyer." Rule 1.7(a)(2), RPC, Rule 407, SCACR. However, a lawyer may continue representation "notwithstanding the existence of a concurrent conflict of interest" so long as "the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client . . ." Rule 1.7(b), Rule 407, SCACR.

In deciding whether to relieve counsel due to an actual conflict of interest,

the trial court must balance the need for the orderly administration of justice with the fact that an irreconcilable conflict exists between counsel and the accused. The court should consider the timing of the motion, the inconvenience to the witnesses, the period of time elapsed between the date of the alleged offense and the trial, and the possibility that any new counsel will be confronted with the same conflict.

Lucas v. State, 352 S.C. 1, 7, 572 S.E.2d 274, 277 (2002) (discussing conflict when counsel believes client intends perjury) (quoting *Matter of Goodwin*, 279 S.C. 274, 276-77, 305 S.E.2d

578, 579 (1983)).

Appellant cites no actual conflict demonstrating counsel should have been relieved. The stated conflict does not involve divided loyalties between a number of clients. *Duncan v. State*, *supra*. Rather, Appellant argues that the court should not have denied the motion based upon the age of the case when trial counsel's representation was straddled between an argumentative client and client-attributed complaints to ODC. (Br. of App. at 16). Yet to the extent trial counsel's representation may have faced a material limitation due to the purported strain the ODC complaints had on her career, the record contradicts any contention that Applicant did not retain the benefit of sufficient pre-trial representation during this period. "The lawyer's own interests should not be permitted to have an adverse effect on representation of a client." Comment 10 to Rule 1.7, RPC, Rule 407, SCACR. The record reflects that counsel continued to act as required even when faced with adversity.

Counsel plainly stated that she had "done everything" within her power to aid and communicate with Appellant "and provide her the same level of representation that [she] would any other client." (R. p. 7, lines 6-11). Counsel twice stated she worked to continue to represent Appellant even though it "weighed heavily" on her that she felt Appellant had intentionally initiated these complaints to ODC and the trust between attorney and client had evaporated. (R. p. 7, line 11 – p. 8, line 6). Counsel's additional responses to the court indicated that she had analyzed and strategized as to how best to try Appellant's case, demonstrating that she was capable and engaged in pre-trial preparations. (R. p. 9, line 8 – p. 10, line 3). Thus, the record supports the trial court's refusal to relieve counsel. Counsel did not denounce her ability to provide competent and diligent representation to the affected client. Rule 1.7(b), Rule 407, SCACR; *see* Comment 8 to Rule 1.7, RPC ("Even where there is no direct adverseness, a

conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend, or carry out an appropriate course of action for the client will be materially limited . . .").

Moreover, "mere disagreement between an applicant and his counsel as to how to proceed with the [case], including the allegations to be raised, is not sufficient cause, in itself, to require the [court] to replace or to offer to replace court appointed counsel with another attorney." *Richardson v. State*, 377 S.C. 103, 106, 659 S.E.2d 493, 495 (2008) (post-conviction relief action considering analogous issue). "Counsel should not be relieved, and the process delayed, because an applicant is dissatisfied with counsel's legitimate refusal to pursue allegations that are meritless and/or not proper in [the action]." *Id.*

The *Richardson* court defined a "common tactic" employed by those appointed counsel that is analogous to the case at bar. *Id.* at 107, 659 S.E.2d at 495. "On most occasions, motions to be relieved as counsel, even if not made at the behest of the applicant, are based on the applicant's insistence on raising allegations that are without merit and/or improper for PCR, counsel's refusal to pursue such allegations, and the applicant's resulting dissatisfaction with counsel." *Id.* at 105 n.2, 659 S.E.2d at 494 n.2. The court therein cautioned the bench:

[T]he 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 [court] should exercise discretion in determining whether the basis for the complaint constitutes sufficient cause to relieve counsel.

Id.

The *Richardson* court found, as have others, that the motion to relieve was properly denied when the basis for the motion was the client's dissatisfaction with counsel due to

counsel's failure to acquiesce to the meritless allegations and strategies the client wished to pursue. *Id.*; *State v. Graddick, supra* (trial judge did not err in denying defendant's motion to relieve counsel where defendant alleged counsel was not representing his interests, was not fully prepared for this case, and the defendant asserted he did not feel comfortable going to court with counsel as his lawyer); *State v. Hyman*, 276 S.C. 559, 281 S.E.2d 209 (1981) (trial judge did not abuse his discretion in denying defendant's motion to relieve counsel based on defendant's allegation that counsel was not up to date on the law), *overruled on other grounds, State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991).

Here, the trial court had before it this same "common tactic"—pro se ODC complaints, which had each been resolved in favor of trial counsel by the time this motion was heard. (Jan. 5, 2018 R. p. 6, lines 15-20). Appellant and trial counsel otherwise failed to develop facts supportive of either an actual conflict of interest requiring that counsel be relieved, or of actual prejudice to the pre-trial representation. *See State v. Gregory*, 364 S.C. at 153, 612 S.E.2d at 450 ("a defendant need not demonstrate prejudice if there is an actual conflict of interest"). When the arguments in favor of the motion to be relieved are only "most conclusory," it is not an abuse of discretion to deny a request for new counsel. *State v. Graddick*, 345 S.C. at 386, 549 S.E.2d at 211. With counsel and Appellant both failing to cite a basis requiring the removal of counsel, or prejudice from counsel's continued representation, the trial court cannot be found to have abused its discretion in denying the motion.

CONCLUSION

For all of the foregoing reasons, Respondent submits that this Court affirm Appellant's convictions and sentence for murder and conspiracy.

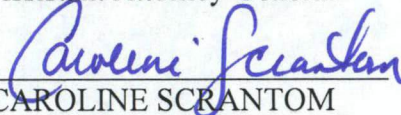
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September 23, 2019
Columbia, South Carolina

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Perry H. Gravely, Circuit Court Judge

RECEIVED
SEP 23 2019
SC Court of Appeals

THE STATE,

Respondent,

v.

JANE KATHERINE HUGHES,

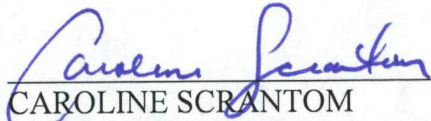
Appellant

Appellate Case No. 2018-000659.

CERTIFICATE OF COMPLIANCE

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

This 23rd day of September, 2019.



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