STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Greenville County
Honorable Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2021-001116

THE STATE,…….RESPONDENT,

v.

JANE KATHERINE HUGHES,……...….PETITIONER.

RETURN TO PETITION
FOR WRIT OF CERTIORARI

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PETITIONER'S STATEMENT OF ISSUES PRESENTED

1. In this murder trial, did the Court of Appeals err in finding that the trial judge correctly refused 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 Petitioner only committed an assault and battery that did not result in death?

2. Did the Court of Appeals err in finding that the trial judge correctly refused to direct a verdict of acquittal for conspiracy when the State failed to prove that an agreement existed between Petitioner and anyone else to commit murder?

3. Did the Court of Appeals err in finding that the trial judge correctly refused to grant trial counsel's motion to be relieved as counsel?

RESPONDENT'S COUNTERSTATEMENT OF ISSUES PRESENTED

1. Whether the Court of Appeals properly upheld the trial court's decision to deny Petitioner's request for an ABHAN jury instruction where Petitioner was tried for murder and conspiracy under an accomplice liability theory and where there was no dispute the victim died as a result of a battery alleged in Petitioner's indictment?

2. Whether the Court of Appeals properly upheld the trial court's decision to deny Petitioner's motion for a directed verdict on the conspiracy charge where the State presented substantial circumstantial evidence by which the jury could, and in fact did, find Petitioner acted in concert with her family to murder her estranged husband?

3. Whether the Court of Appeals properly upheld the trial court's decision to deny Petitioner's motion to relieve trial counsel where Petitioner failed to make a sufficient showing of a qualifying, actual conflict of interest or prejudice?

STATEMENT OF THE CASE

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

The case was prosecuted by Thirteenth Circuit Assistant Solicitor M. Mark Moyer and Lauren Taylor, Esq., represented Petitioner. (R. p. 18). Taylor moved to be relieved as counsel on January 5, 2018; the Honorable Letitia H. Verdin denied her motion and set the matter for trial. Petitioner proceeded to trial by jury along with a co-defendant, Jacob Hughes ("Brother"), from April 2 to April 4, 2018. (R. p. 18). The Honorable Perry H. Gravely presided. (R. p. 1). The jury convicted the Petitioner of murder and conspiracy and Judge Gravely sentenced Petitioner to 30 years for murder and five concurrent years for conspiracy with credit for 1,063 days time served. (R. p. 593). Jacob Hughes was sentenced to four years for conspiracy with credit for 292 days time served. (R. p. 593). The State did not pursue the weapons charge against the Petitioner at trial. (R. p. 26).

Petitioner timely filed a notice of appeal and the South Carolina Court of Appeals affirmed Petitioner's convictions and sentence on July 21, 2021. *State v. Hughes*, 2021-UP-283 (Ct. App. 2021) (per curiam). The Court of Appeals called for a return to Petitioner's petition for rehearing, which the State filed on August 23, 2021. The court denied Petitioner's request. Petitioner filed a petition for writ of certiorari with this Court on October 4, 2021 and this return of Respondent follows.

STATEMENT OF FACTS

For purposes of this brief, Respondent relies on the summary of facts of the crime, investigation, and trial as the South Carolina Court of Appeals set out in their direct appeal opinion:

At 11:54 P.M. on January 24, 2015, Hughes called 911 and asked the operator to send officers to her home, where she lived with her two children, her boyfriend Andrew Martin, her parents John Hughes (Father) and Margaret Hughes (Mother), and sometimes her brother Jacob Hughes (Brother). When the first officer arrived, Father was standing outside the front of the home holding a handgun and Victim was lying unresponsive on the ground, bleeding from his head and multiple gunshot wounds. Hughes, Martin, Mother, Brother, and the children were inside the home. Victim was pronounced dead at 12:13 A.M.

On January 28, 2015, Hughes, Martin, Father, Mother, and Brother were arrested. Hughes was indicted for conspiring with Father, Mother, and/or Brother to kill Victim, the murder of Victim, and possession of a weapon during the commission of a violent crime.

On January 5, 2018, Hughes and her appointed counsel (Counsel) appeared before the trial court for a hearing on Counsel's motions for a continuance and to be relieved. Counsel requested the continuance in order to obtain the trial transcript of a previous trial—for which she also had applied for funds due to Hughes's indigent status—and the trial court granted the motion. However, the trial court denied the motion to be relieved as counsel. In April 2018, Hughes and Brother were tried jointly for murder and conspiracy to commit murder, and the following evidence was presented.[1]

In the months preceding Victim's murder, he and Hughes were involved in a custody dispute over their children. Victim and Hughes previously lived in California, and Victim sought enforcement of a California court order giving him custody of the children. Hughes and her parents were extremely worried Victim would receive custody or unsupervised visitation. One witness talked with Hughes, Father, and Mother the night before Victim's murder, and the witness said Hughes was angry and adamant that Victim not get custody of the children. The witness testified Hughes said "I wish he was just gone. Things would be so much easier if he was just gone," and everyone chuckled.

On the night of Victim's murder, Victim and Brother sat in a bar and talked from 8:07 P.M. to 10:35 P.M., and then they went to a restaurant approximately two miles from Hughes's home and talked from 10:49 P.M. until 11:21 P.M. While Brother was with Victim, there were multiple calls and text messages between Father and Brother. At 10:03 P.M., Brother sent Father a text message reading "Call when you're ready for pie."[2] Father replied several times between 10:04 P.M. and

[1] The State did not go forward with the weapon possession charge.

[2] On the day before Victim's murder, Father sent Brother a text message saying, "Stop on [the] way home, need [] to discuss dessert. 'Revolution is the solution.'"

11:10 P.M., stating, “Will do,” “Almost,” “Just a few minutes,” and “Call me.” In each of Father's text messages, he ended the message with “green dragons and elm trees” in quotation marks. When Victim and Brother left the restaurant, they drove to Hughes's home.

At Hughes's home, Father told Martin that Victim was coming to talk about the custody dispute, and he asked Martin to wait outside. While he was outside, Martin heard a large crash from inside. When he entered the house, he saw the kitchen table had been overturned and Hughes was standing in the kitchen entryway wielding and swinging a hammer. Father was crouching and pointing a gun at Victim, who was kneeling on the floor and bleeding, and Brother was standing behind Victim. Martin then pulled Hughes into the foyer so she could call the police, and he heard Brother try to tase Victim. Victim tried to escape through the kitchen window, but Brother and Mother grabbed at him to try to prevent his escape while Father ran out the front door.

Victim escaped through the window, and Martin heard him begging for his life before Martin heard Father shoot Victim several times. Mother began cleaning the kitchen, and Brother helped before he went to the back of the house. Martin later heard Brother say he broke the taser and flushed it down the toilet. When Martin asked Hughes why she hit Victim with the hammer, she told him she did it to “protect her family” and “because [Father] hesitated.” Martin testified Father stated twice that nobody would be in trouble if the police did not find out what happened inside the house, which Martin interpreted as threats.

When officers found Victim, they observed that the bottom of his shirt was ripped and his pants and underwear were around his ankles. Officers found a trail of blood running from Victim's body to the kitchen window, and they found Victim's blood on the kitchen blinds, a hammer and blanket in the kitchen, and Hughes's shirt and pants. Officers discovered nonvisible blood stains on the kitchen floor and table, the foyer wall, the hallway bathroom, and a damp rag found in the kitchen trash can.

At trial, the State played Hughes's 911 call for the jury, in which Hughes tells the 911 operator that Victim broke into the house and was trying to kill her and her children. However, before the 911 operator answered and before Father shot Victim, the call recorded Hughes asking where Victim was and repeatedly saying “you gotta get to him” and “you gotta get him.”The doctor performing Victim's autopsy found at least five gunshot wounds and determined those wounds were the cause of Victim's death. The doctor also noted blunt force trauma on Victim's head and found two different wound patterns, one of which was consistent with the claw side of a carpentry hammer. The doctor testified Victim had been hit with the claw side of the hammer at least four to six times.

The jury found Hughes guilty of murder and conspiracy to commit murder, and the trial court sentenced her to concurrent sentences of thirty years and five years, respectively, with credit for time served. This appeal followed.

State v. Hughes, 2021-UP-283, 2021 WL 3076693 (Ct. App. 2021).

STANDARD OF REVIEW

"In criminal cases, appellate courts sit to review errors of law only, and are therefore bound by the trial court's factual findings unless clearly erroneous" or the trial court abused its discretion. *State v. Robinson*, 410 S.C. 519, 526, 765 S.E.2d 564, 568 (2014); *State v. Edwards*, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009). "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." *State v. Pittman*, 373 S.C. 527, 570, 647 S.E.2d 144, 166-67 (2007).

Requested Jury Charge

"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). "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. 172, 175, 536 S.E.2d 387, 389 (Ct. App. 2000) (emphasis in original). "To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." *State v. Mattison,* 338 S.C. 469, 697 S.E.2d 578, 583 (2010).

Denial of a Directed Verdict

"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 is concerned with the existence of evidence, not with its weight." *State v. Littlejohn*, 228 S.C. 324, 329, 89 S.E.2d 924, 926 (1955).

Motion to be Relieved as Trial Counsel

This Court reviews the trial court's denial of a motion to be relieved for an abuse of discretion. *State v. Gregory*, 364 S.C. 150, 152, 612 S.E.2d 449, 450 (2005).

DISCUSSION

I. The Court of Appeals properly upheld the trial court's decision to refuse to charge the jury on ABHAN as there was no dispute the victim died as a result of a battery alleged in the indictment. The jury was correctly charged on murder and conspiracy to commit murder alone as the State was pursuing an accomplice liability theory.

Even though there is no dispute the victim died as a result of a battery alleged in her indictment and even though the State was trying her for murder and conspiracy under hand of one hand of all, Petitioner argues she was entitled to a jury charge on assault and battery of a high and aggravated nature ("ABHAN"). (Petition p. 5). She argues that ABHAN is a lesser-included offense of murder and that the jury *could* have found her only guilty of ABHAN because she was not the one who delivered the fatal blow. (Petition p. 11). She argues her boyfriend's act of making her call 911 represented her voluntary withdrawal or an intervening event that interrupted the chain of events that led to the victim's death. Respondent submits the Court of Appeals made no error in their July 21, 2021 per curiam opinion affirming the trial court and urges this Court to likewise affirm. This Court already settled this issue in *State v. Fields*, 314 S.C. 144, 442 S.E.2d 181 (1994).

At the conclusion of the charge conference, the trial court held:

> 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 18-25).

The Court of Appeals properly upheld the trial court's decision to only charge the jury on murder and conspiracy. (Jury charge: R. 557 to R. 581);[3] (*State v. Hughes*, 2021-UP-283 at 4 (Ct.

[3] Trial judge, *e.g.*: "Now, I'm going to give you the actual elements of the charges for which you will be deliberating. The Defendants are charged with murder. The State must prove beyond a reasonable doubt that the Defendants killed another person with malice aforethought . . . . The Defendants are charged with conspiracy. And the State must prove beyond a reasonable doubt

App. 2021)). The court found that since "the State argued at trial that Hughes was guilty of murder under the doctrine of accomplice liability" as "there was evidence Hughes joined with her family to murder Victim," ABHAN was not an appropriate lesser-included offense according to the facts of this particular case. The court relied on *State v. Fields* in its ruling, as this Court has previously held that ABHAN was not a lesser-included offense of murder when there is no dispute the victim died as a result of the battery alleged in the indictment. *Fields*, 314 S.C. at 145, 442 S.E.2d at 182.

The *Fields* victim was "severely beaten by a group of people in a parking lot . . . and died as a result two months later." *Id.* at 144-145, 442 S.E.2d at 182. The indictment alleged that the petitioner "feloniously, willfully and with malice aforethought beat and/or aid[ed] and abet[ted] others in beating [the victim] with fists and/or various other weapons and that [the victim] died as a proximate result thereof." *Id*. at 145, 442 S.E.2d at 182. At trial, evidence was presented that the petitioner participated in the beating by pushing and kicking the victim while he was on the ground. This Court found the petitioner was properly convicted of voluntary manslaughter, also finding he was *not* entitled to an ABHAN charge as it was not a lesser-included offense of murder when the victim died from actions the petitioner was involved in in concert with others. *Id.* Similarly, here, there is no dispute the victim died from a battery alleged in the indictment:

> That JANE KATHERINE HUGHES did in Greenville County, on or about the 24th 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 died as a proximate result thereof. This is in violation of the South Carolina Code of Laws (1976) as amended.

(R. p. 596).

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that the Defendant combined with one or more persons for the purpose of committing an unlawful act or committing a lawful act by unlawful means. There must be a mutual understanding, agreement, or common intention and plan." (R. p. 604, lines 8-12).

Petitioner argues this case should be distinguished from *State v. Fields* because the 911 call was allegedly an intervening event between the Petitioner's hammer strikes and the victim's death by gunshot wound and was evidence of her withdrawal. (Petition p. 11). However, the record does not show Petitioner *voluntarily* broke the causal chain and willingly withdrew. Instead, the record shows her boyfriend pulled her into the hallway and made her call 911, while all the while encouraging her family to follow through with their plan to kill the victim: she was recorded on the 911 call asking where her hammer was, and saying "you gotta get to him," and "you gotta get him." The record *does* demonstrate substantial circumstantial evidence[4] that Petitioner was directly involved in the conspiracy to kill her estranged husband, for which she had the strongest motive.

<u>At trial, the State presented evidence of the following:</u>

- Petitioner was in a years-long, heated custody battle with the victim, her estranged husband. He lived in California and sought to enforce the California Family Court Order that granted him full custody of his eldest child in a South Carolina court. (R. p. 215, line 21 to R. p. 216, line 20; R. 233, line 20 to R. 234, line 25). Notice of the South Carolina custody hearing was sent out on January 20, 2015, four days before the victim's murder. (R. p. 238, lines 19-20).

- About a month before his murder, a woman from the Hughes' church (who was a guardian ad litem with no involvement in the Hughes' case) came to the Hughes' house with her husband to give them advice. (R. p. 415, line 12 to R. p. 417, line 21). She reported Petitioner as "very upset," crying, and wanting "to know if she was going to lose her kids." "She was very distraught about losing the kids to [the victim.] She said that she just couldn't . . . lose her children." (R. p. 438, lines 14-18).

- The custody dispute caused the entire Hughes family [Father, Mother, Brother, Petitioner] to be "very anxious, very agitated." (R. p. 309, lines 13-24).

- Petitioner told her boyfriend she was concerned the victim was going to gain unsupervised visitation and/or custody. (R. p. 310, line 21 to R. p. 312, line 8).

[4] "To establish sufficiently the existence of the 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. The circumstantial evidence and the conduct of the parties may consist of concert of action." *State v. Condrey*, 349 S.C. 184, 192, 562 S.E.2d 320, 323-324 (Ct. App. 2002) (emphasis added).

- Petitioner, Father, and Mother discussed the upcoming family court custody hearing extensively in the weeks leading up to the victim's murder. (R. p. 311, lines 14-25).

- Father asked Petitioner's boyfriend to stay "out of sight" when the victim came over to the Hughes house "to meet with them about the custody case to work it out outside of court" well before the date of the murder. (R. p. 312, line 9 to R. p. 313, line 15). Petitioner's boyfriend reported Father had talked regularly about self-defense and the Castle Doctrine prior to the murder and said Petitioner felt things would be easier if the victim was out of the picture. (R. p. 329, line 5 to R. p. 331, line 22).

- Two days before the January 24, 2015 murder, Father texted Brother that they "need to discuss dessert . . . 'revolution is the solution.'" (R. p. 461, lines 18-25).

- The woman from their church came to see Petitioner, Father, Mother, and Petitioner's boyfriend again the night before the murder from 7:00 PM to 2:00 AM. (R. p. 438, line 24 to R. p. 439, line 2). She reported Petitioner was "more angry" and "more vocal;" "adamant that [the victim] not get these children." (R. p. 440, lines 4-6). She reported Petitioner said, "Things would be so much easier if [the victim] was just gone" and said everyone chuckled in response. (R. p. 440, lines 10-14).

- Father texted Brother the night of the murder at 10:03PM and asked Brother to call him when he was "ready for pie." (R. p. 462, lines 1-9). Brother replied, "Will do." (R. p. 462, lines 11-15). Brother was with the victim at a restaurant at the time. (R. p. 456, line 23 to R. p. 457, line 24). Father texted Brother thirty-seven minutes later, "almost." (R. p. 462, lines 17-22). Fourteen minutes later, Father texted Brother, "just a few more minutes," then asked Brother to call him at 11:03 PM. (R. p. 462, line 24 to R. p. 463, line 10). The two exchanged four brief phone calls between 9:47 PM and 11:27 PM. (R. p. 463, line 14 to R. p. 464, line 7).

- Brother left the Waffle House with the victim at 11:20 PM the night of the murder and both drove back to the Hughes' house in the victim's vehicle. (R. p. 456, lines 10-12).

- Petitioner's boyfriend went to sit outside (as instructed by the Hughes family) while the victim and Brother went into the house with Mother, Father, and Petitioner. (R. p. 315, lines 7-10). He said he heard a "loud crash," and "opened the door to investigate," and found Petitioner holding a hammer, Father pointing a gun at the victim, the victim on his knees, bleeding, and Brother standing over him. (R. p. 215, lines 7-24; R. p. 318, line 3 to R. p. 319, line 25). "The kitchen table was upside down." (R. p. 316, line 4).

- Petitioner's boyfriend pulled Petitioner into the hallway to make her call 911, and snatched the hammer out of her hand. (R. p. 318, line 19 to R. p. 319, line 8). She called 911 at 11:54 PM and reported her husband was trying to kill her. (R. p. 55, line 9.) However, before the dispatcher picked up, she was recorded saying, "where's my hammer?," "get to him," and "we gotta get him." (State's Exhibit 94, 0:00 to 3:05).

- Brother attempted to tase the victim but he escaped out of the kitchen window (even though Mother and Brother tried to keep him from doing so) and fell six feet to the ground. (R. p. 319, line 15 to R. p. 320, line 25; R. p. 484, lines 2-4). Father ran outside, boyfriend heard the victim begging for his life, and then gunshots rang out. (R. p. 320, line 14 to R. p. 322, line 15).

- Neighbors heard "somebody screaming for help" saying "please, God, help me, somebody, God, help me," and saw Father "standing over the body." (R. p. 99, lines 16-21; R. p. 107, line 21 to R. p. 108, line 2). The victim did not have a weapon on his person. (R. p. 368, line 25 to R. p. 369, line 4). It was undisputed that Father fired the four gunshots that killed the victim. (R. p. 317, line 22 to R. p. 322, line 15; R. p. 371, line 2 to R. p. 379, line 6).

- Mother and Brother immediately attempted to clean up the kitchen with a rag and cleaning supplies. (R. p. 172, line 10 to R. p. 175, line 6; R. p. 323, lines 1-23; R. p. 484, line 25 to R. p. 485, line 2).

- Boyfriend heard Father saying the "authorities couldn't know what went on inside the house . . . if they didn't know what went on inside the house, then nobody would be in trouble." Boyfriend said Father reiterated the same thing a few days later. (R. p. 328, lines 1 to R. p. 331, line 5).

- Two days later, on January 26, 2015, Petitioner told her boyfriend "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).

- The forensic pathologist testified that along with the four gunshot wounds, the victim had sustained blunt-force trauma to the head and possibly to his broken jaw consistent with five to six blows from a hammer. (R. p. 376, lines 1-17; R. 380, line 14 to R. p. 382, line 19).

The State presented more than enough substantial circumstantial evidence to show Petitioner was involved in a conspiracy to murder the victim with Father, Mother, and Brother. The State prosecuted Petitioner under an accomplice liability theory, and the evidence does not support the conclusion that Petitioner was *only* guilty of ABHAN rather than murder. "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 one offense." *State v. Geiger*, 370 S.C. 600, 608, 635 S.E.2d 669, 674 (Ct. App. 2006) (collecting cases). "[A] defendant is not entitled to a charge on lesser-related offenses." *State v. Dickerson*, 395 S.C. 101, 121, 716 S.E.2d 895, 906 (2011). **"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." *Coleman*, 342 S.C. at 175, 536 S.E.2d at 389 (emphasis in original.)

Further, the record does not support a finding that Petitioner lacked malice aforethought. As the Court of Appeals highlighted, ABHAN does not include the element of malice aforethought as the charge of murder does. (*Hughes*, 2021-UP-283 at 3.) The record does not support her claim that she voluntarily removed herself from the conspiracy or clearly communicating that intent to her family in a manner that could legally signify withdrawal.[5] The record instead shows she was distressed about the impending custody hearing (which was to occur four days after the murder), that the family anxiously discussed the impending hearing repeatedly, and that she believed things would be easier if the victim were just out of the picture. The record shows Petitioner inflicted five to six blows from a hammer to the victim's head and jaw and shows Petitioner confessed she "did it" because her father hesitated and she did what she did to protect her family. Petitioner was the one with the strongest motive. She was not merely present at the scene. The record is clear she was directly involved in the chain of events that caused the victim's death.

"The law of withdrawal is set forth in *State v. Woods*, 189 S.C. 281 (1939), which states that one who has entered a common design to commit a crime escapes responsibility for the acts of his associates . . . if, before the crime is committed, he withdraws entirely from the undertaking, and the fact of his withdrawal is communicated to his associates, under such circumstances as would permit them to take the same action." *State v. Vang*, 353 S.C. 78, 86, 577 S.E.2d 225, 228-

[5] Petitioner offered *State v. Tyler*, 348 S.C. 526, 531-32, 560 S.E.2d 888, 890 (2002) in support of her claim that the trial court should have charged ABHAN as the jury could have allegedly found a break in the causal link between her actions and the victim's death. However, the *Tyler* Court focused on incorrect charging language while the issue before this Court is not incorrect language but whether a charge could or should have been made in the first place according to the facts of this particular case. Petitioner presents an inapplicable academic argument.

229 (Ct. App. 2003). The Court of Appeals did not err when it upheld the trial court's decision to refuse to charge ABHAN. This Court should affirm the Court of Appeals.

II. The Court of Appeals properly upheld the trial court's decision to deny Petitioner's motion for a directed verdict. The State presented substantial circumstantial evidence from which a jury could, and in fact did, conclude that Petitioner participated in a conspiracy. It was the trial court's job to determine if there was *any* evidence that she was involved. Weighing the evidence was up to the jury.

Petitioner argues the Court of Appeals erred in upholding the trial court's refusal to direct a verdict of acquittal on the conspiracy charge. She claims the State failed to prove an agreement to conspire between herself and anyone else to commit murder even though they presented substantial circumstantial evidence she was involved. (Petition pp. 16-17). Their specific failure, according to Petitioner, was not producing text messages or phone calls (or, direct evidence) between herself and her Father and Brother that proved her involvement. (Petition pp. 14-17). She essentially claims the trial court erred by not weighing the circumstantial evidence presented against her and finding it came up short. The Court of Appeals appropriately refused to grant her relief on this claim. (*Hughes*, 2021-UP-283 at 2-3). "The trial court should deny a motion for directed verdict as to any charge when "there is '*any* substantial evidence which reasonable tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.'" *State v. Littlejohn*, 228 S.C. 324, 329, 89 S.E.2d 924, 926 (1955) (emphasis added).

The Court of Appeals rightly set forth *State v. Phillips* in denying relief, highlighting that when reviewing a motion for a directed verdict, "the trial court is concerned with the existence of evidence, not with its weight." *State v. Phillips*, 416 S.C. 184, 192, 785 S.E.2d 448, 452 (2015). "The trial court must deny a motion for directed verdict 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. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000); (*Hughes*,

2021-UP-283 at 2.) Viewing the evidence and all reasonable inferences in the light most favorable to the State, the court found:

> [T]he trial court did not err . . . . the text messages between Father and Brother and Father's threatening statements regarding the need to conceal the events occurring inside Hughes's home from the police could lead the jury to "fairly and logically deduce []" there was a conspiracy to murder Victim . . . .
>
> The State also presented evidence indicating Hughes was a part of the conspiracy. Before Father shot Victim outside the house, Hughes's 911 call recorded Hughes telling others "you gotta get to him" and "you gotta get him." The State also showed that Hughes was worried about losing custody of her children to Victim, that she struck Victim multiple times in the head with a carpentry hammer, and that she did so "to protect her family" and "because [Father] hesitated." A jury could find this evidence shows Hughes acted to further the conspiracy by attacking Victim and then directing others to prevent Victim from escaping and to complete the murder . . . .
>
> "Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial [court] to direct a verdict of acquittal is not error." (quoting *State v. Irvin*, 270 S.C. 539, 543, 243 S.E.2d 195, 197 (1978)).

(*Hughes*, 2021-UP-283 at 3.)

It is hard to imagine a set of facts more compelling, conclusive, and consistent than the ones in this case from which to conclude the existence of a conspiracy. And Petitioner had the strongest motive of them all to not only participate, but also to initiate. Here, the Court of Appeals properly found the record could not be read to show a "total failure of competent evidence as to the charges alleged" that would entitle Petitioner to a directed verdict. This Court should affirm.

III. The Court of Appeals properly found the trial court did not abuse its discretion in denying Petitioner's motion to relieve trial counsel. Petitioner did not establish a qualifying conflict of interest or make a showing of sufficient prejudice that would allow the trial court to grant her motion.

Petitioner argues she was entitled to an attorney with whom she had *no* personal conflict or disagreement. (Petition p. 22). "The conflict in the present case did not involve dual representation. Instead, the conflict existed directly between Petitioner and counsel based on counsel's belief that Petitioner and or [her] family had encouraged other clients to file grievances."

(Petition p. 22). Petitioner argues this constituted a "conflict of interest" between them pursuant to the South Carolina Rules of Professional Conduct that established sufficient cause to relieve her attorney. The Court of Appeals properly denied relief, finding Petitioner failed to meet her burden to "show satisfactory cause for removal." *State v. Childers*, 373 S.C. 367, 372, 645 S.E.2d 233, 235 (2007). First, Petitioner improperly argued a "conflict of interest" [as defined by Rule 107 of the Rules of Professional Conduct] included personal disagreements between attorney and client, when that rule (and other, related rules) only address "conflicts of interest" within the realm of dual representation, which Petitioner did not establish or allege occurred. Rule 107, RPC, Rule 407, SCACR. Second, Petitioner did not prove how the alleged personal disagreements prejudiced her or hindered trial counsel's legal judgment or representation.[6] She has not shown that an irreconcilable conflict existed between counsel and herself that would have given the trial court the ability to relieve her attorney. (*See Lucas v. State*, 352 S.C. 1, 6, 572 S.E.2d 274, 277 (2002)).[7] (*Hughes*, 2021-UP-283 at 4).

The Court of Appeals found that Petitioner had filed four grievances against trial counsel, but they were all determined to be without merit *before* the hearing on the motion to be relieved.[8] (R. p. 6, lines 15-20).

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[6] *See, e.g., Cuyler v. Sullivan*, 446 U.S. 335, 348 (1980) ("In order to establish a violation of the Sixth Amendment, a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer's performance.")

[7] "[M]otions to withdraw must lie within the sound discretion of the trial judge. In making the decision, 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."

[8] As Respondent has previously noted, *Petitioner* did not make the motion to be relieved; trial counsel did. (R. p. 4, line 4 to R. p. 16, line 10). The motion was heard and denied on January 5, 2018 and trial did not begin until April 2, 2018 because trial counsel asked for a continuance in

The court also found:

> The trial court asked Hughes if she coerced Counsel's other clients to file the grievances, and she denied doing so. The trial court noted Counsel's reputation as an excellent criminal attorney and considered Counsel's representation following the grievances. Specifically, the court commended Counsel for requesting both the transcript from a previous trial and the funds for the transcript, stating that many attorneys would not have done the same.
>
> The trial court, noting Counsel was in a difficult position if her assertion was true, expressed concern that relieving Counsel "midstream" would be detrimental to Hughes. We find the trial court properly exercised its discretion in denying Counsel's motion.
>
> Furthermore, Hughes has failed to show the trial court's denial prejudiced her as the record shows Counsel's representation was not affected by the grievances . . . . Counsel successfully objected to evidence that would have strengthened the State's case on the conspiracy charge and effectively cross-examined the State's witnesses. Based on the foregoing, we affirm the trial court's denial of Counsel's motion to be relieved.

(*Hughes*, 2021-UP-283 at 4).

The Court of Appeals followed this Court's holding in *Richardson v. State* and upheld the trial court's decision to deny the motion, as "the filing of a disciplinary complaint shall not result in automatic removal of appointed counsel." *Richardson*, 377 S.C. 103, 106-107, 659 S.E.2d 493, 495 (2008) (per curiam) (finding "mere disagreement between an applicant and his counsel as to how to proceed is not sufficient cause, in itself, to require" relieving and replacing counsel).[9] "While an applicant *may* have the right to reject or discharge court-appointed counsel

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order to obtain a transcript from a prior, relevant trial. (R. p. 4, line 18 to R. p. 5, line 6). Petitioner could have availed herself of those four months and made the motion herself. However, Petitioner never made her own motion to relieve counsel or renew trial counsel's motion after January 5. She said she wanted counsel relieved at the hearing after the judge asked her what she wanted, only maintaining, however, "The only issue I have is communication and visits." (R. p. 13, lines 20-22). As such, Petitioner failed to preserve her current argument regarding disciplinary complaints for review.

[9] Petitioner claims this Court should distinguish this case from its holding in *Richardson* (where this Court found the PCR court properly denied the motion be relieved) because there was not sufficient cause to relieve counsel in that case as there allegedly was here. (Petition p. 23). However, Petitioner herself fails to demonstrate an actual conflict of interest here.

and proceed pro se or retain his own counsel, he does not have the right, without a showing of satisfactory cause to refuse or dismiss the counsel appointed and have other counsel appointed." *Id*. at 106, 659 S.E.2d at 495 (emphasis in original). The Court of Appeals correctly noted here that, "[t]he mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction." *Hughes*, 2021-UP-283 at 4 (quoting *State v. Gregory*, 364 S.C. 150, 152-153, 612 S.E.2d 449, 450 (2005)).

This Court has already found that the mere filing of a complaint shall not result in automatic removal of counsel without more. *Richardson*, 377 S.C. at 107, 659 S.E.2d at 495. If a client could relieve their attorney by merely filing frivolous, meritless grievances, clients could bounce from attorney to attorney and drag out his or her case for years, severely limiting the administration of justice.

> 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 Court of Appeals correctly denied Petitioner relief on this issue as the trial court did not abuse its discretion by denying the motion. This Court should affirm the Court of Appeals.

CONCLUSION

For the reasons stated above, this Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

(*See State v. Gregory*, 364 S.C. 150, 612 S.E.2d 449 (2005) (finding an actual conflict of interest existed when trial counsel began representing the petitioner's prosecutor in her divorce action as petitioner began to believe counsel and the solicitor were "in cahoots"); *Duncan v. State*, 281 S.C. at 438, 315 S.E.2d at 811 (1984) (outlining the test for determining when an actual conflict of interest between two or more clients an attorney represents.))

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