

The Supreme Court of South Carolina

The State,

Respondent,

v.

Adams Gibson,

Petitioner.

The Honorable Steven H. John
Richland County
Trial Court Case No. 2005-GS-40-09085

ORDER

The request for an extension to serve and file Brief of Petitioner is granted and extended until May 23, 2012. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

April 24, 2012

cc: Chief Appellate Defender Robert M. Dudek
Assistant Attorney General Alphonso Simon, Jr.,
Warren Blair Giese, Esquire



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

April 23, 2012

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
P.O. Box 11330
Columbia, SC 29211

RECEIVED

APR 23 2012

S.C. Supreme Court

(1)

Re: State v. Adams Gibson

Dear Mr. Shearouse:

The brief of petitioner and additional copies of the appendix are due to be served and filed with the Court today. However, because of my heavy workload at this time, I am requesting a thirty day extension in which to serve and file the brief

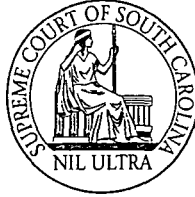
By copy of this letter, I am informing Alphonso Simon, Jr., Esquire, of the Attorney General's Office, of my request.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD/cms

cc: Alphonso Simon, Jr., Esquire



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

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March 22, 2012

Chief Appellate Defender Robert M. Dudek
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: The State v. Gibson, Adams

Dear Counsel:

Enclosed is the Order granting your Petition for Writ of Certiorari in the above entitled matter.

It will be necessary for you to furnish this office with an additional thirteen (13) copies of the appendix within thirty (30) days from the date of this letter.

Brief of Petitioner should be served and filed on or before April 23, 2012. The brief is not properly filed until we have proof of service.

Brief of Respondent should be served and filed within thirty (30) days after petitioner's brief is filed. We must have proof of service. Any reply brief should be served and filed within ten (10) days after filing of respondent's brief.

Very truly yours,

Daniel E. Shearouse
SS

CLERK

DES/lda

Enclosure

cc: Assistant Attorney General Alphonso Simon, Jr.,
Warren Blair Giese, Esquire
The Honorable Jenny Kitchings

The Supreme Court of South Carolina

The State,

Respondent,


v.

Adams Gibson,

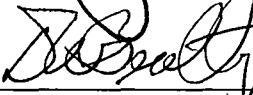
Petitioner.

ORDER

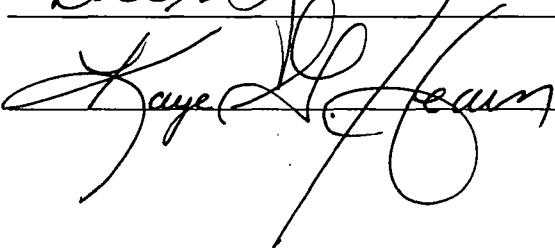
Petitioner seeks a writ of certiorari to review the Court of Appeals' decision in *State v. Gibson*, 390 S.C. 347, 701 S.E.2d 766 (Ct. App. 2010). The petition is granted as to Question 1, but denied as to Question 2. The parties shall proceed to serve and file the appendix and briefs as provided by Rule 242(i), SCACR.



C.J.



J.



J.

Columbia, South Carolina

March 22, 2012

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County

Steven H. John, Circuit Court Judge

RECEIVED

FEB 24 2011

Opinion No. 4747 (S.C. Ct. App. filed 9/29/2010)

05-GS-40-9085.

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

ADAMS GIBSON,

PETITIONER

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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ATTORNEY FOR PETITIONER.

INDEX

INDEX 1

CERTIFICATE OF COUNSEL 2

QUESTION PRESENTED 3

STATEMENT OF THE CASE 4

ARGUMENT

1.

The Court of Appeals erred by ruling petitioner was properly denied a directed verdict on the charge of murder where there was no substantial circumstantial evidence petitioner was acting in concert with his brother, Jacques, who apparently shot the victim during a bar parking lot melee. The state’s case against petitioner was essentially one discredited witness, Shunta Wilson, who claimed she saw petitioner reach for a gun inside the automobile, and at some point shoot it, since this isolated claim, and the fact petitioner earlier called Jacques about the problem at the club was insufficient to send the case to the jury. Petitioner’s case should not have gone to the jury as this in reality is a guilt by association and not a substantial circumstantial evidence case.....9

2.

The Court of Appeals erred by ruling it was not error for the trial judge to refuse to instruct the jury on involuntary manslaughter, since there was evidence petitioner’s brother Jacques, the co-defendant and possible shooter, armed himself in self-defense, did not fire the first shot, and unintentionally fired the fatal shot that hit the victim..... 13

CONCLUSION 15

CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on 11/22/2010.

QUESTIONS PRESENTED

1.

Whether the Court of Appeals erred by ruling petitioner was properly denied a directed verdict on the charge of murder where there was no substantial circumstantial evidence petitioner was acting in concert with his brother, Jacques, when Jacques apparently accidentally shot the decedent during a bar parking lot melee since the state's case against petitioner was essentially Shunta Wilson's discredited claim that she saw petitioner reach for a gun inside the automobile, and at some point shoot it, where the state did not even assert petitioner shot anyone, and the fact petitioner earlier telephoned Jacques about the problem at the club were insufficient to send the case to the jury on suspicion alone?

2.

Whether the Court of Appeals erred by ruling it was not error for the trial judge to refuse to instruct the jury on involuntary manslaughter, since there was evidence petitioner's brother, the co-defendant and shooter, armed himself in self-defense, did not fire the first shot, and unintentionally fired the fatal shot that hit the victim?

STATEMENT OF THE CASE

Procedural history

Petitioner was indicted by the Richland County grand jury, along with his brother, Jacques Gibson for the offense of murder. Jacques Gibson was also indicted for possession of a firearm by a person under twenty-one years of age. R. 770 . There joint case came on for trial on May 21, 2007 before the Honorable Steven H. John and a jury. Nathaniel Roberson represented petitioner. I.S. Levy Johnson represented Jacques Gibson. Detrich Lake and Kathryn “Luck” Campbell were the assistant solicitors. R. 1.

At the conclusion of the trial on May 24, 2007 the jury found both petitioner and his brother guilty. R. 766, l. 20 – 767, l. 9. Judge John sentenced both petitioner and his brother to thirty-years imprisonment. R. 769, ll. 5 – 20.

The Court of Appeals affirmed petitioner’s conviction in State v. Adams Gibson, 390 S.C. 347, 701 S.E.2d 766 (2010). App. 1-6. Petitioner sought rehearing. App. 7-11. Rehearing was denied. App. 12-13.

This petition for a writ of certiorari follows.

Relevant facts

On the night of September 5, 2005 Torri Boyd went to Chance’s Sports Bar on Two Notch Road in Columbia. Boyd was twenty-six years old, and he was from Winnsboro. A dispute, and then chaos, broke out between the men from Winnsboro and the men from Ridgeway in the parking lot of the bar that night. R. 2, l. 13 –7, l. 18.

Boyd claimed petitioner Adams Gibson told him at one point inside the Sports Bar: “Don’t be looking at my girl . . .” R. 6, ll. 8 – 22. When the fight later broke out Boyd recalled: “I grabbed the first person I could grab and fell to the ground, and I was getting kicked and hit basically.”

Boyd said he had “no idea” who was hitting him “when everything started breaking loose.” R. 16, l. 1 – 17, l. 5. Boyd claimed petitioner Adams was involved in the fight in some manner. R. 31, ll. 7 – 9. (Hereinafter “Adams.”)

Winnsboro native Ravaris Henry was also at Chance’s that night with Boyd and the decedent. R. 54, l. 3- 56, l. 24. Henry testified the evening with the Winnsboro men and the Ridgeway men started out well with everybody shaking hands “hugging, talking, laughing . . .” R. 57, l. 15 – 58, l. 7. However, Henry testified that when the fight later started there was “total chaos, yelling and all that.” R. 62, ll. 3 – 18.

Henry testified that during the chaos he saw petitioner’s brother, Jacques, shooting his gun in the air as he was driving away. R. 65, l. 5 – 66, l. 3. There would be evidence Jacques was responsible for the decedent being hit. Jacques acknowledged in his brief before the Court of Appeals that he probably was responsible for unintentionally shooting the decedent.

Marcus Tucker was from Ridgeway. He knew Adams and his brother Jacques. R. 296, l. 10 – 299, l. 22. Tucker remembered the fight starting that night with the men from Winnsboro. R. 299, l. 6 – 303, l. 18. Tucker testified he did not see Adams with a gun or shooting a gun that evening. R. 299, ll. 8 – 11.

The only person at Chance’s Sports Bar that night who claimed to have seen Adams with a gun was Shunta Wilson. Wilson claimed the manager told the men to either keep the noise down, or leave the club. R. 311, l. 11 – 314, l. 22. Wilson said things “kind of died down a little bit” after that and then the fight later started outside the club. R. 314, l. 7 – 315, l. 22.

Wilson said she saw a “white Escort” pull up, and “a girl gets out.” This woman attempted to break up the fight. Wilson claimed she saw Adams go to the Escort at this time, reach underneath the seat, and pull out a gun. R. 315, l. 18 – 316, l. 16. Wilson said as people were trying to get back

inside the bar she heard some shots go off and she saw the Escort “speed off.” R. 316, l. 15 – 317, l. 13.

Wilson would later identify Adams from a photo line-up. She claimed she saw Adams shooting a gun that evening amid the chaos. R. 329, l. 2 – 330, l. 19. However, as will be seen *infra*, the state *did not claim it was petitioner Adams* that shot the decedent, and her identification testimony was discredited.

Lakisha Davis went to pick-up Adams from the Sports Bar with Jacques. Davis testified she heard shots fired that night but she never saw Adams involved in the fight. R. 186, l. 7 – 187, l. 13. Lakisha also said she did not see Adams with a gun. R. 193, ll. 7 – 18.

Demetric Davis testified he was with Lakisha and Adams that evening. R. 197, ll. 3 – 21. Demetric also said he did not see Adams involved in the fight or shooting a gun. R. 209, l. 25 – 211, l. 21.

Stephon Willingham, Jr., also went with Jacques to get Adams from the Sports bar. R. 280, l. 18 – 286, l. 20. Willingham said he saw Jacques get a gun but he never saw Adams with a gun. R. 285, l. 12 - 294, l. 6.

Adams gave a statement to the police in which he said he telephoned Lakihsa and his brother Jacques “to come and pick me up from down there [at the Sports Bar]” because he thought there was going to be trouble. R. 606, l. 15 – 607, l. 6. Adams denied that he possessed a gun that evening or that he was responsible for the shooting. R. 608, l. 2 – 609, l. 8.

Vernon Davis testified that Jacques fired a weapon that evening and he claimed Adams was involved in the fist fight. R. 568, ll. 5 – 23.

Motions and request to charge

Defense counsel moved for a directed verdict noting that only one witness -- Wilson -- claimed Adams even had a weapon, or discharged that weapon. Defense counsel further noted that Wilson's description of the man involved clearly did not match Adams. Defense counsel argued the judge should direct a verdict under these circumstances. R. 656, l. 11 – 661, l. 11.

The solicitor responded that the state never claimed Adams “fired the fatal shot” but she maintained Adams was still responsible for the decedent's death in the bar fight under the “hand of one is the hand of all.” R. 656, l. 14 – 697, l. 22. The judge denied the directed verdict motion. R. 658, l. 23 – 659, l. 3.

Defense counsel would renew his directed verdict motion. R. 662, l. 25 – 663, l. 22. Defense counsel argued there was no evidence Adams shot and killed the victim and that the evidence was insufficient to go to the jury under the “hand of one is the hand of all theory.” R. 662, l. 25 – 663, l. 22. The motion was again denied.

Defense counsel also requested an instruction on involuntary manslaughter based upon the evidence that Jacques was shooting the gun into the air during the chaos. R. 664, l. 17 – 670, l. 6. Defense counsel argued the men had the right to act on appearances in self-defense. The judge refused to charge self-defense or involuntary manslaughter. R. 670, l. 4 – 678, l. 13.

Court of Appeals

The Court of Appeals noted that “the State does not contend Adams fired the fatal shot. Rather, the State simply maintains there is *sufficient* circumstantial evidence that Adams agreed to, and did, act in concert with Jacques to assault the Winnsboro group; thus, sufficient evidence of Adams's guilty existed to submit the issue to the jury under the hand of one is the hand of all theory.” App. 4. (emphasis added).

The Court of Appeals also wrote that the evidence created an inference “that Adams informed Jacques of the situation [by telephone] and the reason for the call “may not have been solely for the purpose of removing Adams from the scene, and that Adams was aware a firearm was available for him to retrieve from Jacques’s white sedan.” App. 4.

The Court of Appeals also found that since Jacques admitted he intentionally shot his gun that Adams was not entitled to an instruction on involuntary manslaughter. App. 6.

Rehearing

Adams argued on rehearing that “even with this inference about the telephone call, and the inference petitioner was aware of a gun in the Jacques car, this respectfully did not constitute substantial circumstantial evidence that petitioner was guilty of murder. State v. Adams Gibson, Op. No. 4747, Shearouse’s Adv. Sh. #40 at p. 67. See State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000).” App. 7.

Petitioner wrote that comparing the facts of this case to State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000) where this Court held the defendant was entitled to a directed verdict, where the *inferences in favor of the state raised a strong case* that Martin was guilty showed the unfairness of the Court’s holding here:

The evidence in this case was only sufficient to allow the jury to speculate that it may have been petitioner who was responsible for the victim being shot. As this Court acknowledged, “the witness accounts of the evening provide no clear picture of who fired weapons or how many shots were fired.” State v. Adams Gibson, Op. No. 4747, Shearouse’s Adv. Sh. #40 at p. 63.

Holding petitioner responsible for shooting the victim during this *mêlée* can respectfully not be reconciled with the holding in Martin. This evidence, including the sole “eyewitness account” of [Wilson], which was contradicted by evidence that the man she was identifying as petitioner by his clothing *was really Jacques*, was insufficient under the precedents of our Supreme Court to take the

case to the jury, and the judge should have directed a verdict for petitioner. See, also, State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984).

In essence, the facts of this case show Adams telephoned Jacques who later arrived. Jacques then independent of petitioner is involved in an altercation. A melee develops in which Jacques shoots his gun. Petitioner is convicted of murder. That is intuitively unfair even while *not considering* the evidence of self-defense and that Jacques did not fire the first shot.

App. 8-9. (emphasis added).

Adams also argued that the jury should have been given an involuntary manslaughter instruction given the very unusual facts of this bar melee:

[I]t is important to remember that pursuant to the state's theory of the case petitioner did not fire the fatal shot, but was guilty under the "hand of one hand of all" for . . . Jacques's actions. State v. Adams Gibson, Op. No. 4747, Shearouse's Adv. Sh. #40 at p. 67. There was evidence petitioner's brother did not fire the *first shot*, and that he armed himself in self-defense. There was evidence from which the jury could find he unintentionally but carelessly shot the victim during the chaos in the parking lot that night.

This Court correctly pointed out the distinction between being "armed in self defense" and "acting in self-defense." A person can be acting lawfully even if he is in unlawful possession of weapon, if he was entitled to arm himself in self-defense at the time of the shooting. State v. Adams Gibson, Op. No. 4747, Shearouse's Adv. Sh. at p. 69. Thus, a defendant, or here Jacques, does not have to have actually armed himself in self-defense to be entitled to an involuntary manslaughter instruction. This Court's holding that because Jacques admitted he intentionally fired his gun that petitioner was not entitled to an involuntary manslaughter instruction was unfair given the extremely unusual facts of this case. However, this holding also ignores evidence to the contrary and the "any evidence" standard of involuntary manslaughter – and any lesser-included offense entitled petitioner to an instruction on involuntary manslaughter.

App. 9-10.

As seen, rehearing was denied.

ARGUMENT

1.

The Court of Appeals erred by ruling petitioner was properly denied a directed verdict on the charge of murder where there was no substantial circumstantial evidence petitioner was acting in concert with his brother, Jacques, who apparently shot the victim during a bar parking lot melee. The state's case against petitioner was essentially one discredited witness, Shunta Wilson, who claimed she saw petitioner reach for a gun inside the automobile, and at some point shoot it, since this isolated claim, and the fact petitioner earlier called Jacques about the problem at the club was insufficient to send the case to the jury. Petitioner's case should not have gone to the jury as this in reality is a guilt by association and not a substantial circumstantial evidence case.

As seen above, the Court of Appeals relied heavily on the inference that the call from Adams to Jacques may not have been solely for the purpose of removing Adams from the scene, and that Adams knew Jacques had a gun in his car. Respectfully, this is speculation and conjecture and it does not rise to the level of substantial circumstantial evidence Adams was guilty of murder under the "hand of one is the hand of all" theory. It much more closely resembles a case of allowing the jury to convict of murder under an impermissible inference of *guilty by association*. That guilt by association was as impermissible in an accomplice liability case as it was a conspiracy case. Holding Adams in essence strictly liable for the actions of his brother Jacques attacks the fundamental fairness of our criminal justice system. See, State v. Barroso, 328 S.C. 268, 272, 273, 493 S.E.2d 854, 856 (1997).

The only witness attributing a gun to Adams was Wilson. "She [Wilson] testified that she saw Adams . . . holding a gun. R. 375, ll. 6-9. She also heard the shots. R. 375, l. 11. However,

she did not answer whether she saw Adams shoot the gun. R. 375, ll. 13-17.” The *state* quickly acknowledged the shakiness of *even this vague evidence given identification problems*. See Respondent’s brief at 10; Respondent’s brief at 10, n. 16.

The Court of Appeals correctly noted that the state *did not contend* Adams was guilty of murder because he shot the decedent. Rather, Adams could allegedly be found guilty of murder because of the actions of Jacques under the “hand of one is the hand of all” theory. This goes too far under the facts of this bar fight – which got out of control – and where some young people were unfortunately armed.

There was no substantial circumstantial evidence that should have allowed the Court to allow the jury to speculate that Adams was acting in concert with Jacques during the chaos that clearly was happening at Chance’s Sports Bar on Two Notch Road that night. Since there was not substantial circumstantial evidence Adams and Jacques were acting in concert at all, and that Jacques’s actions were the natural and foreseeable result of what they contemplated, the judge erred by refusing to direct a verdict. See State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000); State v. Cherry, 348 S.C. 281, 559 S.E.2d 297 (2002); State v. Al-Amin, 353 S.C. 405, 478 S.E.2d 32 (Ct. App. 2003).

A close examination of State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000) and State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984) reveal that this Court has clearly rejected piling inference upon inference -- as was done in this case -- to reach the level of substantial circumstance evidence required to overcome a directed verdict motion. Since there was not any substantial circumstantial evidence Adams was acting in concert with his brother Jacques at the time Jacques shot his gun during this free for all, Adams was entitled to a directed verdict. See State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000); State v. Cherry, 348 S.C. 281, 559 S.E.2d 297 (2002); State v.

Al-Amin, 353 S.C. 405, 478 S.E.2d 32 (Ct. App. 2003). Fundamental fairness, respectfully, required the trial court to issue a verdict of acquittal for Adams on the charge of murder, and certiorari should be granted to fully brief this issue.

2.

The Court of Appeals erred by ruling it was not error for the trial judge to refuse to instruct the jury on involuntary manslaughter, since there was evidence petitioner's brother Jacques, the co-defendant and possible shooter, armed himself in self-defense, did not fire the first shot, and unintentionally fired the fatal shot that hit the victim.

As seen, and the Court of Appeals recognized, there was evidence Adams's brother, Jacques, apparently killed the unintended victim, Dennis Irby, accidentally during the chaos in the parking lot. Jacques *did not fire the first shot*. Tr. 506, l. 17 – 507, l. 15. Several witnesses reported having seen Jacques shooting the gun in the air. Tr. 308, ll. 1 – 3; Tr. 532, ll. 4 – 10; Tr. 841, l. 21 – 842 l. 25.

There was evidence Jacques fired the gun as the mob descended. The state wrote that Jacques “[a]dmitted he shot the gun in the air, but *it may have dropped down* while he was shooting . . . Jacques told police that he may have shot in the direction where Irby was standing, but he did not aim at Irby.” Respondent's brief at 13. (emphasis added).

As stated above, Jacques admitted on appeal before the Court of Appeals, and he acknowledged that he may well have accidentally shot the decedent, but that he was shooting in self-defense, and therefore his reckless handling of the firearm meant the crime was involuntary manslaughter and not murder.

That is consistent with prior opinions of this Court mandating an involuntary manslaughter instruction under circumstances evidencing self-defense. See State v. Light, 378 S.C. 641, 664, S.E.2d 465 (2008); State v. Mekler, 379 S.C. 12, 664 S.E.2d 477 (2008); State v. Burriss, 334 S.C. 256, 513 S.E.2d 199 (1999); State v. Crosby, 355 S.C. 47, 584 S.E.2d 110 (2003). Adams

acknowledges some precedent for the fact that intentionally firing a gun at someone – a warning shot or at the ground – disqualifies a person from receiving an involuntary manslaughter instruction.

However, in both State v. Light, 378 S.C. 641, 664, S.E.2d 465 (2008) and State v. Crosby, 355 S.C. 47, 584 S.E.2d 110 (2003) there was evidence the defendant may have intentionally pulled the trigger by accident while under siege. The highly unusual facts of this bar do not neatly allow an application of the precedent above, but Adams submits this melee, where Jacques did not fire first and was armed in self-defense, justified giving the jury the option of involuntary manslaughter for Adams in this case. Certiorari should be granted.

CONCLUSION

By reason of the foregoing arguments a writ of certiorari should be issued to allow full briefing on these two issues.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R M Dudek", written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER.

This 24th day of February, 2011

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Steven H. John, Circuit Court Judge

Opinion No. 4747 (S.C. Ct. App. filed 9/29/2010)
05-GS-40-9085.

THE STATE,

RESPONDENT,

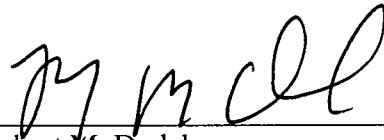
V.

ADAMS GIBSON,

PETITIONER

CERTIFICATE OF SERVICE

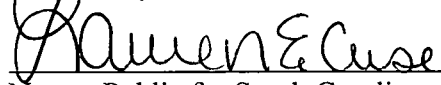
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix, in this case has been served on Alphonso Simon, Jr., Esquire, and the S.C. Court of Appeals this 24th day of February, 2011.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 24th day
of February, 2011.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014

Original

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY
The Honorable Steven H. John, Circuit Court Judge

On Petition for Writ of Certiorari to the Court of Appeals
Opinion No. 4747 (S.C. Ct. App. filed 9/30/2010)

THE STATE

RESPONDENT,

V.

ADAMS GIBSON,

PETITIONER

RETURN TO PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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APR 29 2011

S.C. SUPREME COURT

TABLE OF CONTENTS

TABLE OF CONTENTS..... 1
PETITIONER’S QUESTIONS PRESENTED..... 2
RESPONDENT’S COUNTERSTATEMENT OF QUESTIONS PRESENTED 2
STATEMENT OF THE CASE..... 3
STATEMENT OF FACTS 3
ARGUMENT..... 16
CONCLUSION..... 24

PETITIONER'S QUESTIONS PRESENTED

1. Whether the Court of Appeals erred by ruling petitioner was properly denied a directed verdict on the charge of murder where there was no substantial circumstantial evidence petitioner was acting in concert with his brother, Jacques, when Jacques apparently accidentally shot the decedent during a bar parking lot melee since the state's case against petitioner was essentially Shunta Wilson's discredited claim that she saw petitioner reach for a gun inside the automobile, and at some point shoot it, where the state did not even assert petitioner shot anyone, and the fact petitioner earlier telephoned Jacques about the problem at the club were insufficient to send the case to the jury on suspicion alone?

2. Whether the Court of Appeals erred by ruling it was not error for the trial judge to refuse to instruct the jury on involuntary manslaughter, since there was evidence petitioner's brother, the co-defendant and shooter, armed himself in self-defense, did not fire the first shot, and unintentionally fired the fatal shot that hit the victim?

RESPONDENT'S COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Whether the Court of Appeals erred when it upheld the trial court's denial of Petitioner's directed verdict motion when there was substantial circumstantial evidence Petitioner acted in concert with his brother Jacques when there was evidence that both Adams requested his brother come to the bar, and there was evidence both brothers fired weapons in concert in the parking lot after a fight broke out between Adams' friends and another group?

2. Whether the Court of Appeals erred when it upheld the trial court's denial of Petitioner's request for an involuntary manslaughter jury instruction when there was no

evidence to support a finding that Petitioner's brother unintentionally fired his gun, and there was no evidence to support a finding that Petitioner's brother was lawfully armed in self-defense?

STATEMENT OF THE CASE

On June 2-3, 2008, Appellant Adams Gibson ("Adams") was tried by a jury for the murder of Dennis Irby. He was tried in the Richland County Court of General Sessions with his co-defendant brother, Jacques Gibson, before the Honorable Steven H. John, Circuit Court Judge. Nathaniel Roberson, Esquire, represented Adams Gibson. I.S. Leevy Johnson, Esquire, represented Jacques. The State was represented by Dietrich Lake, Esquire, and Kathryn "Luck" Campbell, Esquire, Assistant Solicitors for the Fifth Judicial Circuit. On May 24, 2007, Adams was convicted of murder. **(R. p. 767)**. He was sentenced to a period of confinement of thirty (30) years for the Murder conviction. **(R. p. 769)**.

Petitioner timely filed a notice of appeal. After full briefing and oral argument, the South Carolina Court of Appeals issued a published opinion affirming petitioner's conviction. State v. Gibson, 390 S.C. 347, 701 S.E.2d 766 (S.C. Ct. App. 2010). **(App. pp. 1-6)**. Petitioner filed a Petition for Rehearing on October 13, 2010. **(App. pp. 7-12)**. Respondent filed a Return to the Petition for Rehearing on November 8, 2010. The Court of Appeals denied the petition on November 22, 2010. **(App. pp. 13-14)**. Petitioner now seeks review of the South Carolina Court of Appeals' opinion in this Court.

STATEMENT OF FACTS

The victim, Dennis Irby, was shot in the midst of a fight between a group of young men from Ridgeway, South Carolina and a group of young men from Winnsboro,

South Carolina. On September 4, 2005, Torri Boyd (“Boyd”), Antwan Martin¹ (“Martin”), Ravaris Henry (“Henry”), and the victim, Dennis Irby (“Irby”), all from Winnsboro, decided to drive to Columbia for an evening out. (R. pp. 4, 57, 120-21). Martin drove the group in his gray Chevrolet Tahoe to a bar called Chance’s. (R. pp. 4, 56-7, 121). They later met up with Antonio Smith (“Smith”) at the bar. (R. pp. 57, 121, 253). That same evening, Lakisha Davis (“Lakisha”), Demetric Davis (“Demetric”), Tramele Davis (“Tramele”), and appellant Adams Gibson (“Adams”), all from Ridgeway,² also drove to Columbia for an evening out.³ (R. p. 219). Lakisha drove the group in her burgundy Nissan Altima. (R. pp. 176, 193, 197, 606). Initially, the group went to a bowling alley. (R. pp. 197, 198). They later decided to go to Chance’s. (R. pp. 197, 198, 219). They also met up with Marcus Tucker (“Tucker”) at Chance’s. (R. p. 219; see R. p. 177). Some of the group from Winnsboro knew members of the group from Ridgeway, and vice-versa. (R. pp. 5, 175, 55, 123, 199, 218).

There were initially no problems between the two groups inside Chance’s. (R. pp. 9, 58, 200, 253-54, 298). Boyd testified that he spoke with one of the Davis fellows. (R. p. 9). Smith testified that he talked with Tucker for a few minutes inside Chance’s. (R. pp. 253-54). Henry and Tramele bought each other beers. (R. p. 58; see R. pp. 225-26). However, at some point during the evening, animosity developed between Demetric and Boyd.⁴ (See R. p. 254). The two had other disputes in the past. (R. p. 7). Shunta

¹ Antwan Martin is also known and referred to as A.J. (See R. p. 3).

² Ravaris Henry is also known and referred to as B. (R. p. 3; see R. p. 61). Antonio Smith is also known and referred to as YoYo. (R. p. 4). Lakisha Davis is also known and referred to as Punkin. (R. p. 7). Demetric Davis is also known and referred to as Bam. (R. p. 173). Tramele Davis is also known and referred to as Smoke. (R. p. 624). Adams Gibson is also known and referred to as Kartez. (R. p. 197).

³ Lakisha testified that Tramele did not ride with the group to Columbia. (R. p. 176). In his statement, Adams stated that Tucker was in the car on the drive down, but did not mention Tramele. (R. p. 606).

⁴ Boyd also asserted that he had a confrontation with Adams over a conversation he had with Lakisha. (R. p. 10). Lakisha testified that she did speak with Boyd, but stated she did not talk with Boyd about the topic

Wilson ("Wilson"), a patron at Chance's that evening, testified that being a confrontation between two groups of guys inside of Chance's. (R. p. 311-13). The bar manager intervened, and asked the men to either quiet down or go outside. (R. p. 314). Adams called his brother, Jacques ("Jacques"), to come pick him up from the bar. (R. pp. 280, 487, 515, 544, 606; see R. pp. 35-6, 255). According to Jacques' statements and Adams' statement to police, he made the call because Demetric had gotten into an argument with someone at the bar. (R. p. 487; see R. p. 608).

When Jacques received the call from his brother, he was hanging out with two friends, Stephon Willingham ("Willingham") and Vernon Davis ("Vernon").⁵ (R. pp. 486, 544). The three drove down to Columbia in a white Ford Escort⁶ to pick up Adams. (R. pp. 279-80, 487, 515, 544, 547). They arrived twenty to thirty minutes after the call was made. (See R. p. 36). When they arrived, Jacques went inside Chance's to retrieve his brother. (R. pp. 280, 515, 544). The other two stayed in the car. Id. According to both of Jacques' statements, Adams pointed out the group with whom the Ridgeway guys had a conflict. (R. pp. 515, 623).

Soon thereafter, the two groups proceeded to leave the bar. (R. pp. 201, 314, 515; see R. pp. 61, 125, 544). Once outside, Boyd and Demetric engaged in a heated argument. (R. pp. 13, 14, 61-2, 224-25, 202, 299-300, 516, 606-07). Several witnesses testified that the argument was regarding Boyd's involvement in the robbery of one of Demetric's relatives. (R. pp. 13, 606-07). The argument escalated into a physical fight

he claims they discussed. (R. p. 179). Smith also testified that Boyd told him about his confrontation with Adams over the conversation Boyd had Lakisha. (R. p. 254). He had no firsthand knowledge of the conversation between Boyd and Lakisha. (R. p. 254).

⁵ Jacques Gibson is also known and referred to as Sha Sha. (R. p. 36). Stephon Willingham is also known and referred to as Fat Man. (R. p. 607). Vernon Davis is also known and referred to as Duwop. (R. p. 541).

⁶ The Ford Escort was registered to Adams' girlfriend's uncle. (R. p. 607).

when Tramele hit Henry. (R. pp. 15, 64, 126, 199, 228, 301). Tramele and Henry fought one another. (R. pp. 62-3). Boyd and Demetric fought one another. (R. pp. 203, R. 301). Martin and Tucker also fought one another. (R. p. 126; see R. p. 301). According to most of the witnesses, Irby, the victim, was not involved in the fight. (R. pp. 62, 137, 235; see R. p. 257). Tramele testified that Irby did hit him one time. (R. p. 244). However, he also stated that Irby just mainly stood over him, watching the fight. (R. p. 243). Smith testified that Irby was attempting to break up the fight. (R. p. 257). Smith was not a participant in the fight. (R. pp. 62, 182, 270, 302). He stated that he tried to serve as a peacemaker. (R. p. 270).

Most of the witnesses testified that they did not see Jacques get involved in the fight.⁷ (See R. pp. 41-2, 45, 103, 560). Several witnesses also testified that they did not see Adams involved in the fight. (R. pp. 210-11, 282, 294, 302).⁸ Lakisha saw Adams standing near the fight, but she testified that he was not involved in it. (R. p. 187). However, Smith testified that he observed Adams hit and kick Boyd while Boyd was on the ground. (R. p. 259). Vernon also testified that he saw Adams swinging at someone. (R. pp. 545, 550, 571).

Smith told Adams to stop jumping on Boyd. (R. p. 259). As Smith headed towards Boyd, Demetric, and Adams, Smith testified Jacques confronted him. Id. Jacques pulled a gun on Smith and told him, "YoYo, don't even think about it." Id. Smith testified he backed off, and then ran away from the fight. Id. Shortly thereafter, Smith recalled hearing a gunshot that was not from Jacques. (R. pp. 260, 275). Someone else was shooting around the same time. (R. p. 275). Smith ducked and hid.

⁷ Two witnesses, Lakisha and Tramele, did not recall seeing Jacques at Chance's at all that night. (R. pp. 184, 208, 213).

⁸ In a statement to police, Jacques also asserted that Adams was not involved in the fight. (See R. p. 626).

(R. p. 260; see R. p. 273). He did not know what happened after that. (R. p. 260). Smith then heard more shots coming from the Ford Escort. (R. p. 261). At that point, the car had moved. Id. Irby had been shot. (R. p. 262). Smith did not know who shot Irby. (R. p. 276). He saw Adams getting into the rear passenger door of the white Ford Escort. (R. p. 263). He did not know if Adams got into the car. (R. p. 264). Smith did state the white Escort sped away. Id. Jacques was the last person Smith saw drive that car. Id.

Willingham testified he told police that he saw Smith walk towards Adams, and Jacques told Smith, "don't do it, YoYo." (R. p. 285). Willingham testified Antonio backed up after Jacques made the statement. (R. p. 286). Willingham had observed Jacques had a black object in his hand that night. (R. p. 284). Willingham saw Jacques point the object to the sky, and then he heard a gunshot. (R. p. 285). Willingham noted it could have been a gun in Jacques's hand. Id. He never saw Jacques point the object at Smith. Id. Then Willingham heard multiple gunshots. (R. p. 287). He could not say if the shots came from Jacques. Id. He noted Jacques had the black object in his hand after he made the statement to Antonio. (R. p. 286). Willingham also stated the car never moved until they got ready to go. (R. p. 284).

Vernon heard shots fired while the groups were arguing. (R. p. 550). He saw Jacques with a gun while the argument was still going on. Id. Vernon specifically recalled Jacques pointed the gun at Smith and told him "don't do it." (R. p. 551). Vernon did not know what Jacques meant when he said that to Smith. (R. p. 571). Smith just looked, holding a beer in his hand. (R. pp. 551-52). Vernon then heard one shot. (R. p. 544). Vernon did not know who fired the first shot. (R. p. 552). He looked up

and saw a second shot, which was taken by Jacques. (R. pp. 544, 552). That shot was fired into the air. (R. pp. 545, 582). Jacques told everyone to chill out. (R. pp. 545, 581). Vernon lay down in his seat. (R. p. 545). He heard more shots, which led him to hop on the floor. (R. pp. 545, 583). He did not know where those shots were coming from. (R. p. 584). Vernon testified Jacques' hand was out of the car when the shots were fired. (R. pp. 553-54). He did not see what Jacques did with the gun after then. (R. p. 551). He never saw Jacques shoot at anyone. (R. p. 584). Vernon only saw Jacques point the gun into the air. Id.

Wilson testified she went outside to watch the fight. (R. p. 314). Shortly thereafter, shots were fired. (R. p. 312). Wilson noted that a white Ford Escort pulled up. (R. p. 315). She then stated Adams went to the Escort, opened the driver's side door, sat down in the door, and reached underneath to pull out a gun. (R. p. 316). Someone yelled out that he had a gun. Id. She saw the gun in his hands. Id. After seeing the gun, others tried to run back into Chance's. Id. Wilson heard four or five shots. Id. Then, the Escort sped off. (R. pp. 316-17).

Wilson testified she only saw Adams shooting a gun that night.⁹ (R. p. 330). She identified Jacques as one of the fighters. (R. p. 329). She saw Adams with a gun, and she saw Jacques fighting a smaller guy. (R. p. 341). She said Jacques hit the guy, the guy hit the ground, and that was the end of the fight. (R. pp. 341, 361). She only saw one gun. (R. p. 349). She recalled Adams was arguing inside of Chance's. (R. p. 357). She also recalled Jacques was arguing inside the bar. Id. However, she said he was not

⁹ Wilson described Adams as wearing a black tee shirt and blue jeans. (R. p. 332). She saw him on the driver side of the Ford Escort. (R. p. 332). Other witnesses testified that it was Jacques wearing a black tee shirt and blue jeans, and Adams was wearing a white tee shirt and blue jeans. (R. pp. 193, 210, 272, 293-94). Adams told police that he was wearing a white tee shirt and gray Dickey pants. (R. p. 608). In his first statement, Jacques also says he was wearing a black tee shirt and blue jeans. (R. p. 517).

talking too much. Id. Wilson reiterated that the guys all left the bar after the bar manager asked them to leave. (R. p. 360). She stayed inside Chance's until a friend told her there was a fight. (R. p. 361). She testified she saw Adams holding a gun. (R. p. 375). She also heard the shots. Id. However, she did not answer whether she saw Adams shoot the gun. Id.

Melvin Dewitt was a patron at Chance's on the night of the shooting. (R. p. 140). He was not connected with either of the two groups. Id. Dewitt testified that he was at the door when the fight started. (R. p. 142). He saw one man being double-teamed by two others. Id. He then saw a small white car start off as they two groups were dispersing from the scene. (R. p. 143). As Dewitt went to his car, he stated they started shooting. Id. Dewitt saw the gunfire, and he asserted there were two guns at the scene. Id. He testified that one of the guns was inside the white car, and another was outside of the car. (R. p. 145). He could not tell who was firing the shots. (R. p. 170). However, he testified the two guns were fired almost simultaneously. Id.

Henry testified he saw Jacques shooting at the white car he was driving. (R. p. 65). Henry saw someone had a gun aimed at something, but he could not tell who had the gun. Id. Henry recalled Jacques shooting a gun into the air. (R. p. 66). The first time he heard shots, he saw Jacques shooting in the air. (R. p. 101). Soon after, he heard a second set of shots. (R. p. 67). Then Irby yelled he was hit. Id. He saw Jacques driving the white car. (R. pp. 82, 103). He saw Adams over by the white car. (R. p. 84).

Adams spoke with police twice about the incident. First, he told Captain James Smith of the Richland County Sheriff's Department that he did not see who actually did the shooting because he was sitting in another car. (R. p. 534). He also told Captain

Smith that he was not in the white Ford Escort that night. (R. p. 534-35). He said that Jacques was in the white Ford Escort. (R. p. 535). Adams further denied he fired a gun that night. Id. Adams later gave a statement to the lead investigator, Walter Shawn McDaniels of the Richland County Sheriff's Department. Adams told McDaniels that when the verbal altercation started, he was in Lakisha's car. (R. p. 607). She told him to go and get Demetric because he was her cousin. Id. Adams also stated he told Antonio to let the fight be between Boyd and Demetric. Id. Adams told McDaniels that he did not have a gun that night. (R. p. 608). He also stated that he did not call his brother to participate in the fight because "that wasn't my beef." Id. He also asserted that he heard that Tramele might have done the shooting. Id.

Jacques gave the police two statements about what happened that evening.¹⁰ According to Jacques's first statement, Jacques went to the Escort, and Adams went to the burgundy car after they exited the bar. (R. p. 516). One of the guys from Winnsboro went to the gray SUV and put something in his pocket. Id. He then put something behind his back and then walked back to the group. Id. Jacques stated that he thought it was a gun, but he did not see one. Id. Then, the fight broke out. Id. Adams pulled up in the burgundy car. Id. He got out and walked over by the fighting. Id. Jacques stated he then heard three shots. (R. p. 516). After hearing the three shots, he jumped into the car and headed back to Ridgeway. Id. He also stated he did not have a gun, and Adams did not have a gun. (R. p. 517). In his second statement, Jacques admitted some of the events were different from what he had stated in his first statement. (R. p. 623). The statement he first gave police was true up until the point where he stated that he did not

¹⁰ Jacques initially provided police with a handwritten note. In the note, Jacques claimed that the two groups left the bar shortly after he arrived. According to the note, Jacques told the guys to chill out. (R. p. 487). Then they started fighting. Id. He pulled off after he heard shooting. Id.

shoot from inside of the car. Id. He observed someone going to the gray SUV and reach for something. (R. p. 624). He did not see what the man retrieved from the SUV. Id. He told police Adams went to the burgundy car and drove it around. Id. He then stated he saw Smith acting like he was going to hit Adams. (R. pp. 624, 626). Jacques pulled the gun on Smith and told Smith not to try to hit his brother. (R. p. 624). Smith backed away. Id. Then Jacques heard two shots. Id. He shot his gun into the air while he was driving away from the scene in the Escort. (R. pp. 624, 625). Jacques told police he fired a 9-millimeter handgun three or four times. (R. p. 624, 625). He later threw the gun over a bridge. (R. p. 625). He admitted he shot the gun into the air, but it may have dropped down while he was shooting. (R. pp. 625, 626). Jacques told police he may have shot in the direction where Irby was standing, but he did not aim at Irby. (R. p. 626). Jacques stated he told Adams, Willingham, and Vernon he thought he may have been the one who shot Irby. Id. Jacques said it was possible he shot Irby. (R. p. 650).

After this second set of shots, Henry and Martin both heard Irby yell he was hit. (R. pp. 67-8, 128). Henry stated Irby held his back, and then fell to the ground. (R. p. 68). When Irby was hit by the shot, he was standing over Tramele. (R. pp. 233, 244). At first, Tramele did not realize Irby had been shot. It was only after he moved Irby off of him that he learned of Irby's injuries. (R. pp. 232, 233). Martin saw Irby fall to his knees, then to his stomach. (R. p. 128). Irby was shot in the back. (R. p. 69). At that point, Wilson came out and assisted Irby. (See R. p. 69). Wilson saw Irby was hurt. (R. p. 318). She assisted him by keeping him propped up and breathing. (R. p. 318).

Lakisha, Adams, Demetric, Tramele, and Tucker returned to Ridgeway in Lakisha's burgundy Altima.¹¹ (R. pp. 190, 204-05, 219, 237, 304, 607; see R. pp. 187-88). Jacques and his friends returned in the white Escort. (R. pp. 545, 607, 608).

Irby died as a result of complications from the bleeding from the lung. (R. pp. 524-25). The bullet was recovered by the forensic pathologist and turned over to law enforcement. (R. p. 435). According to an X-ray, the bullet was close to the victim's spine. (R. p. 435). David Collins, a firearms and toolmarks examiner for the Richland County Sheriff's Department, testified that the bullet found in Irby was a 9 millimeter round.¹² (R. pp. 446-47, 448). It was not fired from the same weapon as three .25 caliber shell casings found on the scene.¹³ (R. p. 446). Several of the witnesses testified that none of the men in the group from Winnsboro had weapons that night. (R. pp. 59-60, 129, 204, 255). Also, no one saw Demetric, Tramele, or Tucker with weapons that night.¹⁴ (R. pp. 60, 74, 129, 204, 255). In his first statement to the police, Jacques stated that neither Vernon nor Willingham had a weapon that night. (R. p. 518).

Motion for Directed Verdict

After the State rested, Adams moved for a directed verdict on the murder indictment. (R. p. 655). Counsel asserted the State presented evidence of two guns being at the scene, with the murder weapon being a nine-millimeter handgun. (R. p. 656). Trial counsel asserted that only one of the nine witnesses who were physically present identified Adams as having a weapon or discharging a weapon. *Id.* The witness who identified Adams' description of him was inconsistent with the description of all of

¹¹ Lakisha did not recall Tucker being in the car. (R. p. 187).

¹² Collins could not make a determination as to whether the 9-millimeter bullet in Irby matched the 9-millimeter casing found on the scene. (R. pp. 449-51).

¹³ Four casings were found on the scene: three .25 caliber casings and one 9 millimeter casing. (R. p. 401).

¹⁴ Several others did not see Adams with a firearm that evening. (R. pp. 294, 272, 572).

the other witnesses who testified as to what he was wearing that evening. (R. pp. 656-57). Then counsel asserted the State had to show Adams was the one who pulled the trigger to the gun that killed the victim. (R. p. 657). He then claimed that the State had implied there was some complicity on Adams' part because he called for his brother to come and pick him up. Id. Counsel claimed that the testimony regarding the phone call clearly indicated that the only purpose for calling his brother was to avoid being involved in any encounter. Id. Then counsel pointed out the only other person who claims to have seen Adams involved in the fight was Vernon, and Vernon only said he saw Adams swinging down. Id. Counsel alleged that was not enough to establish Adams was the one who pulled the trigger of the gun that killed the victim. (R. pp. 657-58).

In response, the State did not contend Adams fired the fatal shot. (R. p. 658). The State noted there was evidence Adams called his brother to the scene with his car, and testimony showed Adams approached the car after his brother arrived at the scene. Id. Two people observed one shooter outside the car, and several witnesses testified Jacques was shooting from inside the car. Id. The State argued there was evidence that Adams and Jacques were the two shooters, and Adams' argument went towards the weight, and not the existence of the evidence. Id. The court respectfully declined to grant the motion and found there was sufficient evidence presented that would allow the case to proceed. (R. pp. 658-59). After the defense rested, Adams renewed his motion for a directed verdict. (R. pp. 662-63). The court again denied Adams' request for a directed verdict. (R. p. 663).

Jury Charge Conference

Adams' counsel requested a jury charge on involuntary manslaughter. (R. p. 664). Counsel noted that Adams' participation was based upon the hand of one/hand of all. (R. pp. 664-65). He argued there were adequate statements taken from Jacques that he was shooting in the air. (R. p. 665). He never pointed the gun at anyone, and he never intended to hurt anyone. Id. There was no evidence of malice. Id. The jury could find that the gun may have dropped while Jacques was shooting in the air. Id. Adams' counsel asserted the jury could find the shooting was an accident, and if they found that with Jacques, then Adams would be in the same category as participating at that level. Id. Jacques' counsel submitted a charge request based on State v. Chapman, 336 S.C. 149, which outlined the elements of involuntary manslaughter. Id.

In response to these arguments, the solicitor argued that under State v. Reese, neither defendant was entitled to a voluntary manslaughter charge. (R. pp. 666-67). In Reese, the South Carolina Supreme Court stated that Reese presented the firearm when he took the gun out and began waving it around. Id. The solicitor argued that the situation in this case was comparable to Reese. (R. p. 667). There were two guns at the scene, and both were out at the time they were shooting them. Id. That would constitute a presentation. Id.

Jacques' counsel argued that this case was factually distinguishable from Reese in several ways. (R. pp. 667-68). Jacques' counsel also requested a charge for self-defense. (R. p. 668). When asked by the court why he thought self-defense was appropriate, counsel argued that all four requirements for a self-defense charge were present. (R. p. 669). Adams' counsel added that in Jacques statement, he indicated he saw a fellow from the opposing side open a gray truck, reach in and get something, put it

in his pocket, and walked to where the fighting actually took place. Id. Jacques had reason to think that both he and his brother were in danger. Id. Adams' counsel noted that either Boyd or another one from his group involved in the fight owned the vehicle. (R. p. 670). Further, the man was going towards the fight, and that a defendant does not have to wait for someone to get the drop on him to act on appearances. Id. Thus, they were entitled to a self-defense charge. (R. p. 671). Jacques' counsel added State v. Fuller, which allows an individual to act on appearances. (R. pp. 671-72).

The trial court found that the elements of self-defense were not met at all in this particular case. (R. p. 672). As for the involuntary manslaughter charge, the court denied the request. The court cited Bowman[sic] v. State,¹⁵ 414 S.E.2d 144, State v. Craig, 227 S.E.2d 306, and State v. Pickens, 466 S.E.2d 364, as being applicable. (R. p. 673). In those cases, the defendant fired a weapon and indicated in all those cases had no intention of shooting anyone, pointing at anyone, trying to bring harm to anyone. Id. One of them fired the gun over somebody's head, and it was not his intention to have anyone injured by his action. Id. The Supreme Court has clearly held in those particular cases that involuntary manslaughter will not rest because the defendant clearly intended to fire the weapon. Id. There was no question that the defendant Jacques Gibson intentionally and deliberately wanted to fire the weapon. (R. pp. 673-74). The fact that there were unintended consequences, unintended actions that resulted from Jacques' intentional act of firing the weapon did not then bring to the front the charge of involuntary manslaughter. (R. p. 674).

The court found an involuntary manslaughter charge was not warranted on the first prong of the definition of involuntary manslaughter because the weapon was

¹⁵ The case citation was for Bozeman v. State.

intentionally fired. (R. p. 674). Further, the court found an involuntary manslaughter jury instruction was not warranted on the second prong because the defendants had not engaged in a lawful act. Id. Therefore, involuntary manslaughter cannot stand in this particular matter. Id. After the jury was charged, counsel for both defendants renewed their requests for charges on involuntary manslaughter and self-defense. (R. p. 764). Those requests were denied. Id.

ARGUMENT

This Court should deny this petition for writ of certiorari. It fails to raise a novel question of law. There was no dissent in the decision of the Court of Appeals. The decision of the Court of Appeals is not in conflict with a prior decision of this Court. No constitutional issues are raised in the petition. There is no federal question in this petition. Finally, the Court of Appeals correctly affirmed Petitioner's conviction.

I. The Court of Appeals correctly found the trial court did not err in denying Adam's Motion for a directed verdict. There was sufficient evidence that Adams acted in concert with his brother when the fatal shots were fired.

Standard of Review

When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight. State v. Al-Amin, 353 S.C. 405, 411, 578 S.E.2d 32, 35 (S.C. Ct. App. 2003) (citing State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002)). A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. State v. Gaines, 380 S.C. 23, 32, 667 S.E.2d 728, 733 (2008). When reviewing a denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If there is any direct

evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must find the case was properly submitted to the jury. Weston, 367 S.C. at 292-93, 625 S.E.2d at 648; State v. Cherry, 361 S.C. 588, 593-593, 606 S.E.2d 475, 477-478 (2004). An appellate court may reverse a trial court's denial of a motion for a directed verdict if there is no evidence to support the trial court's ruling or if the ruling is based on an error of law. State v. Dantonio, 376 S.C. 594, 603, 658 S.E.2d 337, 342 (S.C. Ct. App. 2008).

The Court of Appeals correctly found there was sufficient evidence to support the murder charge going to the jury. As noted by the Court of Appeals,

In this case, the State does not contend Adams fired the fatal shot. Rather, the State simply maintains there is sufficient circumstantial evidence that Adams agreed to, and did, act in concert with Jacques to assault the Winnsboro group; thus, sufficient evidence of Adams's guilt existed to submit the issue to the jury under the hand of one is the hand of all theory. In order to demonstrate that Adams and Jacques intended to join together in a common design to achieve an illegal purpose, the State maintains: (1) Adams called Jacques to the scene; (2) when Jacques arrived he went inside the bar and Adams pointed out the group of Winnsboro men, rather than leaving straight away; (3) Williams testified Adams approached Jacques's white sedan in the parking lot and retrieved a gun moments before the shooting; and (4) although separately, the two men fled the scene after the shooting.

Here, at minimum, the evidence creates the inferences that Adams informed Jacques of the situation, that the reason for the call may not have been solely for the purpose of removing Adams from the scene, and that Adams was aware a firearm was available for him to retrieve from Jacques's white sedan. When viewed in the light most favorable to the State, the circumstantial evidence in this case infers Adams and Jacques may have acted in concert in assaulting the men from Winnsboro. See State v. Ward, 374 S.C. 606, 615, 649 S.E.2d 145, 150 (Ct. App. 2007) (holding in a case with similar facts, that evidence the defendant and his co-defendant together chased after two men in the melee of a parking lot brawl and fired shots, killing a bystander, was sufficient to overcome a directed verdict motion); see also Langley, 334 S.C. at 649, 515 S.E.2d at 101 (indicating evidence that the defendant and co-defendant were seen together, circumstantial evidence placing defendant at the scene of the

crime, and eye-witness testimony, was sufficient to warrant submitting the case to the jury on any theory of liability, including the hand of one is the hand of all theory). Accordingly, we find the trial court did not abuse its discretion and affirm its denial of Adams's motion for a directed verdict.

Gibson, 390 S.C. at 354-55, 701 S.E.2d at 770.

There was substantial circumstantial evidence that Adams was acting in concert with Jacques when he fired the shots. Under “the hand of one is the hand of all” theory, “one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose.” State v. Langley, 334 S.C. 643, 648, 515 S.E.2d 98, 101 (1999). Here, the Gibson brothers set out to assault Boyd and the other men from Winnsboro. Wilson testified she observed Adams walk to the white Escort, open the driver’s side door and retrieve a gun. (R. p. 316). She then saw and heard four or five shots from either a .22 or .25 caliber handgun. (R. pp. 316, 317). The police found shell casings for two different guns at the scene; three .25 caliber shells. (R. pp. 399-401).

Dewitt testified he saw two people firing guns that night. (R. p. 143). One was inside a white car, and the other was outside the white car. (R. p. 145). They were both shooting in the same direction at the same person. (R. p. 145). Vernon testified Adams came to the white Escort and stood outside the car. (R. p. 549). The testimony at trial clearly indicated that none of the other combatants in the fight possessed a gun. (R. pp. 59-60, 74, 129, 204, 255). Furthermore, the testimony clearly indicated that neither Smith nor Irby had weapons. (R. p. 255).

Several witnesses testified that Adams called Jacques to come to Chance’s. (R. pp. 280, 487, 515, 544, 606; see R. pp. 35-6, 255). While both Adams and Jacques alleged in their statements that Adams called Jacques to pick him up to avoid a fight,

Adams did not leave the bar immediately after Jacques came to pick him up. Neither brother left the bar's parking lot prior to the beginning of the fight. Adams did not ride home with Jacques in the white Ford Escort. (See R. pp. 190, 204-05, 219, 237, 304, 545, 607, 608; see also R. pp. 187-88). Boyd testified he had a confrontation with Adams inside the bar concerning Boyd's conversation with Lakisha. (R. p. 10). Smith further testified Boyd informed him of this confrontation while they were still inside the bar. (R. p. 254). When Jacques arrived at the bar, he went inside to get his brother. (R. pp. 280, 515, 544). According to both of Jacques' statements, his brother pointed out the group with whom the guys from Ridgeway were having trouble. (R. pp. 515, 623). There was also testimony indicating Adams attacked Boyd in the parking lot, and Jacques interceded in Smith's attempt to stop Adams' attack on Boyd. (R. p. 259). Finally, both brothers fled the scene in different cars. Flight from the scene of a crime can be evidence of guilty knowledge and intent. Al-Amin, 358 S.C. at 413, 578 S.E.2d at 36-7.

Contrary to Petitioner's assertions, this case is not analogous to the situation that arose in State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000). In Martin, the South Carolina Supreme Court found there was not substantial circumstantial evidence the defendant was involved in a murder because there was no evidence that placed the defendant in the apartment where the crime occurred. Martin, 340 S.C. at 602-03, 533 S.E.2d at 574-75. The evidence presented indicated that a car matching the defendant's description was at the victim's apartment complex. However, the Supreme Court noted there was no evidence that conclusively indicated the car seen was the defendant's car, and there was no evidence that both the defendant and his co-defendant arrived at the scene in the car. Further, the Supreme Court found there was no evidence either

defendant entered the victim's apartment, and there was no evidence the victim's death occurred during the time the car matching the defendant's was at the apartment complex.

In Petitioner's case, inapposite to that in Martin, there was clear circumstantial evidence establishing Petitioner was at the scene when the murder occurred, and that he was a participant in the actions that led to the death of Dennis Irby. As already noted, one eyewitness places Petitioner at the scene shooting a firearm. Another eyewitness indicated that two gunmen were shooting from around the co-defendant's car. Yet another witness testified Petitioner was near the co-defendant's car when the shots were fired. Unlike Martin, the evidence presented in Petitioner's case does more than just cast suspicion that he may be involved in the shooting.

Overall, there was substantial circumstantial evidence that Jacques and Adams acted in concert in firing shots at the group of men from Winnsboro. As a result, there was sufficient evidence upon which a jury could have found Adams guilty of murder under the theory of hand of one/hand of all. Since there was substantial circumstantial evidence to support the murder charge under the hand of one/hand of all theory, the trial court was correct in denying Adams' motion for a directed verdict.

II. The Court of Appeals correctly found the trial court did not abuse its discretion in not charging the jury with involuntary manslaughter; there was not sufficient evidence Jacques was either armed in self-defense or acted in lawful self-defense.

Standard of Review

“An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion.” State v. Williams, 367 S.C. 192, 195, 624 S.E.2d 443, 445 (S.C. Ct.App.2005) (quoting Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000)). “To warrant reversal, a trial court's refusal to give a

requested jury charge must be both erroneous and prejudicial to the defendant.” State v. Patterson, 367 S.C. 219, 232, 625 S.E.2d 239, 245 (S.C. Ct. App. 2006). “The law to be charged must be determined from the evidence presented at trial.” Id. If there is any evidence to support the requested charge, the trial court should grant the request. Williams, at 195, 624 S.E.2d at 445. The evidence must be reviewed in the light most favorable to appellant. State v. Cottrell, 376 S.C. 260, 262, 657 S.E.2d 451, 452 (2008).

Involuntary manslaughter is the killing of another without malice and unintentionally while engaged in either: (1) an unlawful act not amounting to a felony and not naturally tending to cause death or great bodily harm; or (2) a lawful act with reckless disregard for the safety of others. State v. Reese, 370 S.C. 31, 36, 633 S.E.2d 898, 900 (2006). To constitute involuntary manslaughter, there must be a finding of criminal negligence. State v. Wigington, 375 S.C. 25, 35, 649 S.E.2d 185, 190 (S.C. Ct. App. 2007)(citing State v. Crosby, 355 S.C. 47, 51-2, 584 S.E.2d 110, 112 (2003)). Criminal negligence for involuntary manslaughter is statutorily defined as “the reckless disregard of the safety of others.” S.C. Code Ann. § 16-3-60 (2007). “A trial court should refuse to charge a lesser-included offense only where there is no evidence the defendant committed the lesser rather than the greater offense.” Crosby, 355 S.C. at 51, 584 S.E.2d at 112.

The Court of Appeals correctly found that Petitioner was not entitled to an involuntary manslaughter charge. In the opinion, the Court of Appeals correctly stated:

[T]he essence of involuntary manslaughter is the involuntary nature of the killing. See Douglas v. State, 332 S.C. 67, 74, 504 S.E.2d 307, 310 (1998) (finding no involuntary manslaughter charge warranted where defendant admitted he intentionally fired a gun into a crowd in self-defense despite testimony that the defendant had been rushed by a group of people during a fight); State v. Pickens, 320 S.C. 528, 466 S.E.2d 364 (1996) (holding

where a defendant admitted he intentionally shot his gun, contending he was acting recklessly but lawfully in self-defense, involuntary manslaughter charge was not warranted); State v. Morris, 307 S.C. 480, 483-84, 415 S.E.2d 819, 821-22 (Ct.App.1991) (noting that, under involuntary manslaughter, the act must be unintentional and defendant intentionally shot his gun though he claimed self-defense); accord Light, 378 S.C. at 648-49, 664 S.E.2d at 468-69 (finding the defendant had lawfully armed himself in self defense and was entitled to an instruction on involuntary manslaughter, in a case in which there existed evidence the gun unintentionally discharged); Brayboy, 387 S.C. at 181-82, 691 S.E.2d at 486 (holding that although unlawful to point and present a firearm, when a defendant lawfully armed himself in self defense his failure to immediately disarm himself when the threat subsided did not amount to unlawful pointing and presenting a firearm and evidence suggesting the gun accidentally discharged was sufficient to warrant instruction on involuntary manslaughter).

In this case, because by Jacques's own admission he voluntarily and intentionally fired his weapon, the trial court properly denied instructing the jury on involuntary manslaughter.

Gibson, 390 S.C. at 357-58, 701 S.E.2d at 771-72.

In each of the cases cited by Petitioner, the defendants were entitled to an involuntary manslaughter charge because there was evidence the defendant did not intentionally fire the weapons in their possession. For instance, in State v. Light, 378 S.C. 641, 664 S.E.2d 465 (2008), this Court found there was evidence to support an involuntary manslaughter charge because "there was also evidence petitioner recklessly handled the gun because, according to his testimony, it fired almost immediately after he took possession of it," and because there was evidence of a struggle between the defendant and the victim over the gun. Id. at 648-49, 664 S.E.2d at 468-69. Similarly, in State v. Mekler, 379 S.C. 12, 664 S.E.2d 477 (2008), this Court found there was evidence supporting an involuntary manslaughter jury instruction because there was testimony and evidence the defendant did not remember firing her shotgun and that she did not intentionally fire her shotgun. Id. at 15-16, 664 S.E.2d at 479. In State v. Crosby, 355

S.C. 47, 584 S.E.2d 110 (2003), the Supreme Court noted that the defendant's statement that he did not even know he had pulled the trigger was evidence that inferred the gun was accidentally discharged. Id. at 53, 584 S.E.2d at 112. Thus, the defendant was entitled to an involuntary manslaughter instruction. Id., 584 S.E.2d at 112-13.

Unlike those cases, there was no evidence in Petitioner's case that his brother Jacques did not intentionally fire his pistol. (R. pp. 624-26). Jacques never claimed that he did not intend to fire the gun in any of his statements. He only claimed that his shot might have been misdirected because his arm may have dropped down while he was firing the gun. (R. p. 625). Clearly, Jacques' gun was intentionally fired.

Further, Petitioner was not entitled to an involuntary manslaughter jury instruction because he was not lawfully armed in self-defense. First, Jacques was not without fault in bringing on the difficulty. "Any act of the accused in violation of law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars the right to assert self-defense." State v. Bryant, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999)). Jacques' actions on the night of the shooting were clearly analogous to that outlined in State v. Slater, 373 S.C. 66, 71, 644 S.E.2d 50, 53 (2007). Almost all of the witnesses who saw Jacques at the scene testified that he was not a participant in the fight.¹⁶ (See R. pp. 41-2, 45, 103, 581). Jacques clearly involved himself in a fight to which he was not a party by firing his gun into the air.

The testimony also indicated that Jacques armed himself before any shots were heard. Witnesses who saw Jacques with the gun in his hand testified that Jacques had pointed the gun at Smith and warned him not to mess with Adams before any shots were fired. (R. pp. 284-86, 551-52, 624; see R. pp. 286, 552, 624). This was after the fight

¹⁶ See also footnote 9, supra.

had already started. Like the defendant in Slater, Jacques brought a weapon to an escalating disturbance. Also, Jacques fired his weapon while he was leaving the scene without regard to where the bullets may have fallen. Thus, there was insufficient evidence to establish that Jacques was not without fault in bringing on the difficulty he faced that evening. Slater, 373 S.C. at 70, 644 S.E.2d at 52-3. See State v. Santiago, 370 S.C. 153, 160, 634 S.E.2d 23, 27 (S.C. Ct. App. 2006).

Furthermore, Jacques had other probable means of avoiding the danger. By his own account, Jacques was inside the Ford Escort when he fired the shots. (R. p. 624). Clearly, Jacques could have easily driven away from the scene to avoid any further incident. There was no testimony indicating that he was unable to do so. In fact, in his second statement to police, Jacques clearly states that he was shooting his gun into the air while he was driving away from the scene. (R. p. 626). Since Jacques was not without fault in bringing on the danger and he had other probable means by which to avoid the danger, there was insufficient evidence to support a finding that Jacques was lawfully armed in self-defense when he fired his gun into the air that night. State v. Smith, 391 S.C. 408, 706 S.E.2d 12, 15-16 (2011); see Bryant, 336 S.C. at 345, 520 S.E.2d at 322; Santiago, 370 S.C. at 161, 634 S.E.2d at 27-28.

Overall, there was insufficient evidence presented at trial to warrant an involuntary manslaughter charge. Since the Court of Appeals properly found Petitioner was not entitled to the instruction, this petition for writ of certiorari should be denied.

CONCLUSION

Petitioner has failed to show that there is a special and important reason for this Court to grant his Petition. It raises no novel question of law. Further, there was no

dissent in the decision of the Court of Appeals. There is no conflict between the Court of Appeals' opinion and any prior decision of this Court. Petitioner has not raised any constitutional issues in the Petition. Also, no federal question was included in the Petition. The Court of Appeals was correct in its findings. As a result, Petitioner's Petition for a Writ of Certiorari should be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

ALPHONSO SIMON JR.
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

DANIEL E. JOHNSON
Solicitor, Fifth Circuit
Post Office Box 192
Columbia, SC 29202

ATTORNEYS FOR RESPONDENT

By: 

Alphonso Simon Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

April 27, 2011.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From Richland County
Steven H. John, Circuit Court Judge

THE STATE

RESPONDENT,

V.

ADAMS GIBSON,

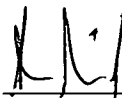
PETITIONER

CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., counsel for the Respondent, certify that I have served the within Return to Petition for Writ of Certiorari to the Court of Appeals on Petitioner by depositing three (3) copies of the same via U.S. mail, first class, postage prepaid to his attorney of record, Robert Dudek, Esq., South Carolina Commission on Indigent Defense, Division of Appellate Defense, 1330 Lady Street, Ste. 401, Columbia, SC 29201.

I further certify that all parties required by Rule to be served have been served.

This 27th day of April, 2011.



ALPHONSO SIMON, JR.
Office of Attorney General
P. O. Box 11549
Columbia, South Carolina 29211-
(803) 734-6305

ATTORNEY FOR RESPONDENT



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

April 29, 2011

RECEIVED

APR 29 2011

The Honorable Daniel E. Shearouse
South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

S.C. Supreme Court

Re: The State v. Adams Gibson

Dear Mr. Shearouse:

The appendix in the above referenced case was served and filed with this Court on February 24, 2011. However, through an inadvertent oversight, the return to petition for rehearing was not included. Therefore, counsel respectfully requests this Court accept this supplemental appendix being filed with Court today.

As indicated by signature below, Alphonso Simon, Jr., of the Attorney General's Office, consents to this request.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD:cms

I consent:

Alphonso Simon, Jr., Esquire

RECEIVED

APR 29 2011

S.C. SUPREME COURT

pm 4-27-11

ALAN WILSON
ATTORNEY GENERAL



July 13, 2009

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

Re: *The State v. Adams Gibson*
Appeal from Richland County

Dear Mr. Shearouse:

Enclosed for filing in your office is the original and six (6) copies of Return to Petition for Writ of Certiorari to the Court of Appeals in the above-referenced case, along with a Certificate of Service.

Thank you for your assistance in this matter.

Sincerely,

Alphonso Simon, Jr.
Assistant Attorney General

AS:dmd

Enclosures

cc: Robert M. Dudek, Esq. (w/three (3) copies of encls.)
The Honorable Daniel E. Johnson, Solicitor 5th Judicial Circuit (w/copy of encls.)
Sandi Wofford, Victim Services (w/copy of encls.)

The Supreme Court of South Carolina

The State,

Respondent,

v.

Adams Gibson,

Petitioner.

The Honorable Steven H. John
Richland County
Trial Court Case No. 2005-GS-40-9085

ORDER

The request for an extension to serve and file the Return to Petition for Writ of Certiorari is granted and extended until April 27, 2011. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY Brenda J. Shealy
Chief Deputy Clerk

Columbia, South Carolina

March 30, 2011

cc: Chief Appellate Defender Robert M. Dudek
Assistant Attorney General Alphonso Simon, Jr.,
Warren Blair Giese, Esquire



ALAN WILSON
ATTORNEY GENERAL

RECEIVED

MAR 28 2011

S.C. Supreme Court

March 28, 2011

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: *The State vs. Adams Gibson*
Richland County
Court of Appeals Opinion No. 4747 filed 9-29-10

Dear Mr. Shearouse:

I hereby request an extension of thirty (30) days in which to file the Return to Petition for Writ of Certiorari in the above-referenced case. The Return is currently due to be served and filed today, March 28, 2011. However, because of my involvement in other matters in state and federal court, I have been unable to timely complete the Return.

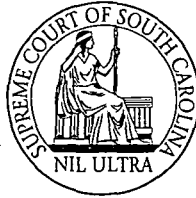
Therefore, I am requesting this extension within which to serve and file the Return to Petition for Writ of Certiorari. I am informing opposing counsel of my request by copy of this letter.

Sincerely,

Alphonso Simon
Assistant Attorney General

AS:dmd

cc: Robert M. Dudek, Esq.



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

February 25, 2011

Chief Appellate Defender Robert M. Dudek
South Carolina Commission
on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: The State v. Gibson, Adams
Case Tracking No. 2010-180806

Dear Counsel:

This office has received your Petition for Writ of Certiorari and Appendix in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,



CLERK

DES/lda

cc: Assistant Attorney General Alphonso Simon, Jr.,
Warren Blair Giese, Esquire
The Honorable Tanya Gee

The Supreme Court of South Carolina

The State,

Respondent,

v.

Adams Gibson,

Petitioner.

The Honorable Steven H. John
Richland County
Trial Court Case No. 2005-GS-40-9085

ORDER

For good cause shown, the request for an extension to serve and file the Petition for Writ of Certiorari and Appendix is granted and extended until February 25, 2011. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY Drenda J. Ahealy
Chief Deputy Clerk

Columbia, South Carolina

February 23, 2011

cc: Chief Appellate Defender Robert M. Dudek
Assistant Attorney General Alphonso Simon, Jr.,
The Honorable Tanya Gee

original

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Steven H. John, Circuit Court Judge

RECEIVED

FEB 22 2011

S.C. Supreme Court

3)

Opinion No. 4747 (S.C. Ct. App. filed 9/29/2010)

05-GS-40-9085.

THE STATE,

RESPONDENT,

v.

ADAMS GIBSON,

APPELLANT

**PETITION FOR EXTENSION TO FILE
PETITION FOR WRIT OF CERTIORARI AND ACCOMPANYING APPENDIX**

The undersigned counsel respectfully requests a **final three day extension until Friday February 25, 2011** in which to file the in the above-referenced case. In support of this motion, counsel would respectfully show the Court the following extraordinary circumstances:

1. The petition for writ of certiorari and accompanying appendix in this case are due to be served and filed today.

2. Counsel filed a petition for writ of certiorari in the United States Supreme Court in State v. Louis Michael Winkler on February 18, 2011. Counsel filed a petition for writ of certiorari and accompanying appendix in the United States Supreme Court in State v. Steven Bixby on February 17, 2011. On February 4, 2011, counsel filed the petition for rehearing in State v. Dominic Gallman with this Court and a stay of execution in State v. Stephen Corey Bryant with the Supreme Court. Counsel filed the initial reply brief of appelliant in State v. Richard Gagnon in this Court on February 3, 2011. The initial reply brief

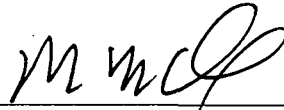
in State v. Jerry Buck Inman was filed with the Supreme Court on January 31, 2011. Counsel filed the initial brief of appellant and designation of matter with this Court in State v. Tommy Toomer on January 26, 2011. Counsel filed the reply brief pursuant to White v. State in State v. Roger Bostick with the Supreme Court on January 26, 2011. Counsel filed the initial brief of appellant and designation of matter in State v. Timothy Hayes with this Court on January 21, 2011. Counsel filed the initial brief of appellant and designation of matter in State v. Derek Maner with this Court on January 14, 2010. Counsel filed the stay for execution in State v. Andres Torres with the Supreme Court and a motion to remand for a reconstruction hearing in State v. Teddy Richardson with this Court on January 12, 2010. Counsel argued Jack Parker v. State for Joseph L. Savitz, III in the Supreme Court Wednesday, January 4, 2011. On the same day, counsel argued the death penalty case of State v. Jeffrey Motts in the Supreme Court.

3. This request is made in good faith, and not for purposes of delay. Counsel intends to continue to work on the cases with more than three extensions first so that the caseload will hopefully become more manageable in the near future, and less extensions will need to be requested.

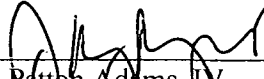
4. As indicated by his consent below, counsel for the state graciously consents to or does not oppose this request.

WHEREFORE, the undersigned counsel would respectfully request a **final three day extension until Friday, February 25, 2011**. Counsel respectfully requests that the time limits for filing the petition for writ of certiorari and accompanying appendix be held in abeyance pending a ruling on this motion.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender



T. Patton Adams, IV
Executive Director or
J. Hugh Ryan, III
General Counsel

February 22, 2011

I DO NOT OPPOSE:



Alphonso Simon, Jr.

The Supreme Court of South Carolina

The State,

Respondent,

v.

Adams Gibson,

Petitioner.

The Honorable Steven H. John
Richland County
Trial Court Case No. 2005-GS-40-9085

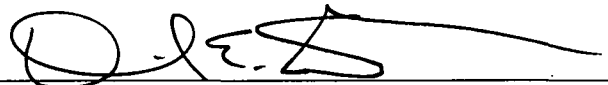
ORDER

For good cause shown, the request for an extension to serve and file Petition for Writ of Certiorari and Appendix is granted and extended until February 21, 2011. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

January 24, 2011

cc: Chief Appellate Defender Robert M. Dudek
Assistant Attorney General Alphonso Simon, Jr.,
The Honorable Tanya Gee



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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Robert M. Dudek, Acting Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

January 21, 2011

The Honorable Daniel E. Shearouse
Clerk of Court
The South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

RECEIVED

JAN 21 2011

S.C. Supreme Court

2)

Re: The State v. Adams Gibson
Richland County
Steven H. John, Judge
Trial Date: May 24, 2007
05-GS-40-9085

Dear Mr. Shearouse:

The petition for writ of certiorari and appendix are due to be served and filed today. However, due to my workload, I am requesting a thirty day extension in which to serve and file these materials.

By copy of this letter, I am informing Alphonso Simon, Jr., Esquire, of the Attorney General's Office, of my request.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD:lec

cc: Court of Appeals
Alphonso Simon, Jr., Esquire

The Supreme Court of South Carolina

The State,

Respondent,

v.

Adams Gibson,

Petitioner.

The Honorable Steven H. John
Richland County
Trial Court Case No. 2005-GS-40-9085

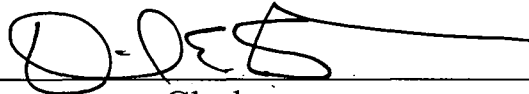
ORDER

The request for an extension to serve and file Petition for Writ of Certiorari and Appendix is granted and extended until January 21, 2011. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

December 23, 2010

cc: Chief Appellate Defender Robert M. Dudek
Assistant Attorney General Alphonso Simon, Jr.,
The Honorable Tanya Gee



SCCID

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Robert M. Dudek, Acting Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

December 22, 2010

The Honorable Daniel E. Shearouse
Clerk of Court
The South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

RECEIVED

DEC 22 2010

S.C. Supreme Court

Re: The State v. Adams Gibson
Richland County
Steven H. John, Judge
Trial Date: May 24, 2007
05-GS-40-9085

Dear Mr. Shearouse:

The petition for writ of certiorari and appendix are due to be served and filed today. However, due to my workload, I am requesting a thirty day extension in which to serve and file these materials.

By copy of this letter, I am informing Alphonso Simon, Jr., Esquire, of the Attorney General's Office, of my request.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD:lec

cc: Court of Appeals
Alphonso Simon, Jr., Esquire