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**Jul 07 2022**  
SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal From Spartanburg County  
Hon. J. Derham Cole, Circuit Court Judge  
Appellate Case No. 2018-001572

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The State,

Respondent,

v.

Lance Antonio Brewton,

Appellant.

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RETURN TO PETITION FOR REHEARING

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On May 25, 2022, this Court affirmed the trial court's decisions to not charge involuntary manslaughter and accident, prohibit Appellant's testimony regarding witchcraft and voices in his head as defense of his flight from the scene, and allow the State to impeach him with a prior robbery conviction. Appellant fails to point out any fact or legal argument this Court has overlooked or misapprehended in issuing its opinion rejecting all of the claims made in his brief.

**Jury Instructions**

Appellant maintains this Court erred in its analysis regarding his entitlement to jury instructions related to accident and involuntary manslaughter. Initially, there is no question Appellant was not entitled to an instruction on accident. As this Court found, in order to receive an accident charge, Appellant must have been acting with due care. It is impossible to argue he operated the gun with due care when he pointed a loaded gun with no safety inside a window at the victim and it went off as she pushed his hand away. As a result, there is no doubt the trial court properly denied the accident instruction.

As it relates to involuntary manslaughter, there must be evidence the unintentional killing of another occurred while the defendant was engaged in either: (1) an unlawful act, not a felony or naturally tending to cause death or great bodily injury, or (2) a lawful act committed with a reckless disregard for the safety of others. See, e.g. State v. Sams, 410 S.C. 303, 309, 764 S.E.2d 511, 514 (2014). This Court correctly noted Appellant never claimed he was acting in self-defense or otherwise lawfully armed himself at the time the victim was shot. Instead, he always acknowledged he did not rightfully possess the pistol, held it in his hand while reaching into her car to take away her keys against her clear will—as evidenced by the fact she swatted his hand and attempted to push it back out the window—and fired the fatal shot.

Additionally, this Court correctly found this case was similar to the facts and subject the same analysis used by Justice Toal in State v. Goodson, 312 S.C. 278, 281, 440 S.E.2d 370, 372 (1994). Appellant was on drugs, held the gun in his hand while arguing with the victim, and he still held the gun in his hand when he reached into the car to take the victim's keys. His unlawful actions were clearly the proximate cause of the victim's death. Appellant's attempts to assert his felon status is the only issue relevant to a determination of proximate cause are without merit because if it was the sole determining factor, then it would be almost impossible to have a situation in which his status as a felon made the difference. It is his unlawful possession of a weapon that made a difference and, when as here he is not lawfully entitled to arm himself and he shoots someone while in unlawful possession of the weapon, it is the proximate cause of their death.

Finally, the State submits this case is even simpler to analyze because Appellant was engaged in the felony of carjacking at the time he shot the victim. Pursuant to S.C. Code Ann. § 16-3-1075(B), "A person is guilty of the felony of carjacking who takes, or attempts to take, a motor vehicle from another person by force and violence or by intimidation while the person is

operating the vehicle or while the person is in the vehicle.” The victim was clearly in the vehicle and in the driver’s seat at the time she was shot. Under Appellant’s own statement of the facts, he had been in an argument with the victim of who was going to drive. There is no indication in the record or in Appellant’s own testimony he was going to be allowed to drive the vehicle at that time. Instead, the victim’s actions clearly indicate a contrary decision on her part as she swatted Appellant’s hand away as he reached into a window to try and take her keys away from her. His actions constituted the crime of carjacking and, as such, his actions were clearly unlawful and precluded the charge of involuntary manslaughter.

### **Witchcraft and Voices Testimony**

In his Petition for Rehearing, Appellant, citing to State v. Rivera, 402 S.C. 225, 741 S.E.2d 694 (2013), contends his right to testify “transcends a mere evidentiary ruling” and, as a result, even if his testimony was inadmissible under the South Carolina Rules of Evidence, he should still be allowed to testify because it was necessary for his defense. The quote in Rivera was not indicating a finding that the right to present a defense trumped the Rules of Evidence, it was indicating the right to testify is not like an evidentiary ruling and subject to harmless error and was instead something greater—a structural error.

Appellant does not challenge any finding that the testimony was based largely on hearsay, nor does he challenge the finding that its admission would confuse the jury and was unduly prejudicial under Rule 403, SCRE. Instead, he merely argues that his right to present a defense trumps all evidentiary rulings—an argument expressly repudiated by the United States Supreme Court. The Court provided:

State and federal rulemakers have broad latitude under the Constitution to establish rules excluding evidence from criminal trials. This latitude, however, has limits. Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the

Compulsory Process or Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense. This right is abridged by evidence rules that infringe upon a weighty interest of the accused and are arbitrary or disproportionate to the purposes they are designed to serve.

Holmes v. South Carolina, 547 U.S. 319, 324 (2006) (internal quotation marks and citations omitted). The Court continued:

While the Constitution thus prohibits the exclusion of defense evidence under rules that serve no legitimate purpose or that are disproportionate to the ends that they are asserted to promote, well-established rules of evidence permit trial judges to exclude evidence if its probative value is outweighed by certain other factors such as unfair prejudice, confusion of the issues, or potential to mislead the jury.

Id. at 326. Certainly, hearsay would be considered another well-established, non-arbitrary evidentiary rule which can be applied to even limit defense testimony. As a result, Appellant does not have an unfettered right to testify to what would otherwise be inadmissible under the Rules of Evidence.

Finally, he asserts the testimony was necessary to explain his decision to flee the scene and to show it did not relate to malice or the shooting. His own testimony indicated that the witchcraft or voices played no role in his fleeing from the scene, and instead, it resulted from his possession of drugs or his “intuition.” (R.268. 270). This is basically the same testimony presented at trial when he indicated he “panicked” because “I had drugs on me.” (R.297). As a matter of fact, when directly asked during the proffer whether the voices had any impact on his decision not to stop, he replied “No, Sir.” Appellant testified: “when I was on the chase I wasn’t hearing nothing.” (R.270). As a result, even if he had a right to present a defense through otherwise inadmissible testimony, the testimony he complains was excluded in this case was entirely inapplicable to his defense.

### **Prior Conviction Impeachment**

Appellant contends the Court erred in finding that he waived any argument regarding the trial court's admission of his prior remote conviction. Even if the issue was not waived by Appellant, the admission of the remote conviction, which was labeled with Appellant's consent as a "crime of dishonesty" instead of being referred to by the actual crime committed, was entirely harmless. "The key factor for determining whether a trial error constitutes reversible error is whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." State v. Tapp, 398 S.C. 376, 389, 728 S.E.2d 468, 475 (2012) (internal quotation marks and citations omitted). "Error is harmless when it could not reasonably have affected the result of the trial." Id.

While Appellant contends one conviction should not have been admitted, a second prior conviction was properly used as impeachment and was also referred to as a crime of dishonesty. So, the jury knew he had committed a prior crime and any prejudice from a second prior crime is very minimal. There is no question Appellant shot the victim. Additionally, even Appellant's own testimony indicated he was attempting to carjack the victim at the time of the crime while pointing an unlawfully possessed loaded gun in her direction. The fact that the judge allowed two prior "crimes of dishonesty" to be mentioned instead of one could not have reasonably affected the result of the trial given the conclusive proof of guilt by overwhelming evidence.

Finally, it appears one of Appellant's co-counsel waived the issue for consideration on appeal. After one co-counsel raised an objection based on the remoteness of the crime, the other co-counsel asked to speak. He asked if the two robbery convictions would be referred to by name or as "crimes of dishonesty." The State agreed to call them crimes of dishonesty and the trial court found that a prudent course of action. Appellant's counsel did not indicate any continuing

objection and instead, simply responded: “Thank you, Your Honor.” (R.285-286). The trial court could certainly have understood co-counsel to be dropping the initial objection once he found the names of the crimes would not be used and they would only be referred to as generic “crimes of dishonesty.” As a result, this Court properly concluded any issue regarding the admission of the remote robbery conviction was waived by Appellant’s co-counsel.

As a result, this Court should deny the petition for rehearing.

**CONCLUSION**

For all of the foregoing reasons, the State requests the panel deny the petition for rehearing and affirm Appellant's convictions and sentences.

Respectfully submitted,

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July 7, 2022

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PROOF OF SERVICE

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I, Caroline Collins, certify that I have served the within Return to the Petition for Rehearing by emailing a copy to Appellant's counsel of record, Adam S. Ruffin, at his primary email address as provided by the Attorney Information System (AIS).

I further certify that all parties required by Rule to be served have been served.  
This 7<sup>th</sup> day of July, 2022.



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## Caroline Collins

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**From:** Caroline Collins  
**Sent:** Thursday, July 7, 2022 12:03 PM  
**To:** 'aruffin@sccid.sc.gov'  
**Cc:** 'Leverett, Scott'; William Blicht  
**Subject:** The State v. Lance Antonio Brewton (2018-001572)  
**Attachments:** BREWTON Lance - Return to Petition for Rehearing - 2018-001572 (03037361xD2C78).PDF

Good Afternoon Mr. Ruffin,

Attached please find a copy of the Return to Petition for Rehearing in The State v. Lance Antonio Brewton (2018-001572). This return will be submitted to the South Carolina Court of Appeals today via the AIS One Drive System.

If you will, please reply to confirm receipt of this email.

Thank you!

**CAROLINE COLLINS**, Administrative Coordinator  
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