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**Jul 27 2022**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Aiken County

Honorable Clifton Newman, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

SHA'KEL RAHEEM DIXON,

APPELLANT.

APPELLATE CASE NO. 2021-000948

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ANDERS BRIEF OF APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

Whether the trial judge erred in allowing the state to admit a photograph of Appellant sitting on a co-defendant's car while displaying his hands in a manner consistent with "gang signs" where the photograph was improper character evidence, and the probative value was substantially outweighed by the danger of unfair prejudice?

## STATEMENT OF THE CASE

Appellant was indicted by the Aiken County grand jury for murder, kidnapping, and possession of a weapon during the commission of a violent crime. R. 874-877. Appellant was tried before the Honorable Clifton Newman and a jury from August 16 – 20, 2021. R. 16. Appellant was tried jointly with Denzell Jackson. R. 16. Appellant was represented by Barry Thompson and William McKellar. Denzell Jackson was represented by Keith Johnson. The state was represented by Jacqueline Charbonneau and Ashley Hammack. R. 16.

The jury found Appellant and Jackson guilty on each count. R. 824, ll. 8 – 25. The judge sentenced Appellant to life imprisonment for murder. R. 871, ll. 21 – 22. Appellant was not sentenced for the kidnapping or possession of a weapon charges.

This appeal follows.

## STANDARD OF REVIEW

“In criminal cases, the appellate court sits to review errors of law only.” State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). Appellate courts are bound by a trial judge’s factual findings unless they are clearly erroneous. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006) (citing State v. Quattlebaum, 338 S.C. 441, 442, 527 S.E.2d 105, 111 (2000)). “The appellate court does not re-evaluate the facts based on its own view of the evidence but simply determines whether the trial judge’s ruling is supported by any evidence.” State v. Lyles, 379 S.C. 328, 333, 665 S.E.2d 201, 204 (Ct. App. 2008).

“[I]n order for this Court to reverse a case based on the erroneous admission or exclusion of evidence, prejudice must be shown.” State v. Taylor, 333 S.C. 159, 172, 508 S.E.2d 870, 876 (1998). “To show prejudice, there must be a reasonable probability that the jury’s verdict was influenced by the challenged evidence or the lack thereof.” State v. White, 372 S.C. 364, 374, 642 S.E.2d 607, 611 (Ct. App. 2007) (citing Fields v. Regional Medical Center Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005)).

In reviewing a trial court’s ruling on the admissibility of evidence, appellate courts recognize that the trial judge has considerable latitude in this regard and will not disturb such rulings absent a prejudicial abuse of discretion. State v. Whitner, 399 S.C. 547, 557, 732 S.E.2d 861, 866 (2012); State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009). “An abuse of discretion occurs when the trial court’s ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” Whitner, 399 S.C. at 557, 732 S.E.2d at 866.

## STATEMENT OF FACTS

On April 30, 2019, between 3 and 4 p.m., Kenya Bush, the mother of Derrick Curry, received multiple phone calls telling her that Derrick was dead. R. 120, ll. 13 – 20. Bush had spoken to Derrick on the phone about two hours earlier and he indicated that he was going to meet “Shaniyah” and then would be home. R. 119, l. 7 – 120, l. 7. Bush did not know who Shaniyah was at that time. R. 120, ll. 8 – 9.

In response to the phone calls Bush was receiving about Derrick’s death, Bush started calling and texting Derrick’s phone but did not get a response from him. R. 120, l. 25 – 121, l. 6. Bush also went to the police station to report what she had heard. R. 120, l. 21 – 24. After leaving the police station, Bush got on Facebook and found Shaniyah’s page and started calling her through Facebook Messenger. R. 121, ll. 11 – 15. Shaniyah gave Bush multiple different stories about where Derrick was. R. 121, l. 16 – 122, l. 21. Bush, however, never saw or heard from Derrick again. R. 122, l. 22 – 123, l. 8.

Derrick’s girlfriend, Cordajiah Council, also testified that she spoke with Derrick on the morning of April 30, 2019. Council recalled speaking with Derrick at around 9:30 a.m. and said they had plans to spend time together later that day. R. 176, l. 21 – 177, l. 13. Council never heard from Derrick again though. R. 177, ll. 14 – 19. Council also spoke with Shaniyah through Facebook and Shaniyah told Council that she had sex with Derrick, and he dropped her off at work. According to Council, Shaniyah never said that Derrick had been harmed. R. 181, l. 8 – 182, l. 24.

At the time of Derrick’s disappearance, Shaniyah Toney had known him for four or five months. She had also known Appellant and Jackson for three or four years. R. 190, l. 10 – 191, l. 20. Shaniyah claimed that Appellant and Jackson were friends and that they had a “beef” with

Derrick. R. 192, l. 11 – 193, l. 10. On April 29, 2019, Shaniyah and Derrick went to see a movie together and while they were at the movie, Appellant texted her to ask when the movie would be over because he supposedly wanted to come to the movie to kill Derrick. R. 194, l. 1 – 196, l. 17. However, when Shaniyah and Derrick left the movie, neither Appellant nor Jackson was there. R. 196, l. 21 – 197, l. 6.

The following morning on April 30, Shaniyah received several text messages from Jackson asking her to come to his mother’s house. R. 197, ll. 11 – 16. She drove her car over to Jackson’s house and said that Jackson, Appellant, and two other men were there.<sup>1</sup> R. 200, l. 2 – 201, l. 16. According to Shaniyah, Jackson got into the passenger side of her car armed with a handgun and told her his plan to “get” Derrick. R. 201, l. 22 – 203, l. 9. Specifically, Shaniyah claimed that Jackson wanted her to go pick Derrick up and bring him back to her mother’s house where she would pretend to want to have sex with Derrick. R. 203, l. 10 – 204, l. 1. Once she got Derrick into her mother’s house, Jackson and Appellant “were just gonna walk in and beat him up.” R. 204, ll. 3 – 6.

Shaniya claimed that Appellant got into her car also armed with a handgun and that she drove Appellant and Jackson over to her mother’s house to drop them off before going to pick up Derrick. R. 206, ll. 11 – 23. Shaniya said that when she picked Derrick up, he had a book bag with a long gun sticking out of it. R. 212, ll. 11 – 23. They went and ate at McDonald’s and then Shaniya took Derrick to her mother’s house and led him into her bedroom. R. 213, l. 3 – 215, l. 14. Shaniya said that she and Derrick started to get sexual but that she could not have sex with him, so she told him that she did not want to have sex. R. 223, ll. 4 – 24. Derrick started getting dressed and while he was doing that, Shaniyah alleged that Jackson and Appellant

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<sup>1</sup> These two other individuals were Christian Barnwell and Altashaun Bacon who were also charged as co-defendants but were not tried with Appellant and Jackson.

walked into her bedroom and Jackson shot Derrick in the eye.<sup>2</sup> R. 224, ll. 6 – 19. Jackson fired the gun a second time, but the second bullet hit the wall.<sup>3</sup> R. 225, l. 23 – 226, l. 3.

Shaniya said that Jackson and Appellant put Derrick's body in a pink tote and placed it in the trunk of Shaniyah's car.<sup>4</sup> R. 227, ll. 16 – 25; R. 234, ll. 8 – 18. They all drove to meet Christian Barnwell and Altashaun Bacon and the four men moved Derrick's body from Shaniyah's car into Bacon's car.<sup>5</sup> R. 234, l. 22 – 235, l. 24; R. 238, l. 21 – 240, l. 16. After this, Jackson, Appellant, and Shaniyah went to Jackson's house to get cleaning supplies and then went to Shaniyah's house to clean up her bedroom. R. 242, l. 6 – 245, l. 22. Jackson and Appellant then dropped Shaniyah off at her job and left with her car. R. 250, ll. 9 – 24.

While Shaniyah was at work she spoke with Derrick's mom and girlfriend. Shaniyah did not tell either of them what happened because she feared what Jackson and Appellant would do to her. R. 251, l. 8 – 252, l. 10. Shaniyah said that Jackson and Appellant picked her up in her car after her shift at work ended and they all went back to Christian's house. R. 252, l. 11 – 253, l. 7. Jackson cleaned Shaniyah's car, including taking her steering wheel cover off and throwing it in a fire that they were burning outside of Christian's house. R. 253, l. 8 – 254, l. 22.

Shaniyah left Christian's house and said that she drove as fast as she could to Greenwood where her child's father lived because she did not want to go back to her house. R. 263, ll. 3 – 21. Shaniyah stayed in Greenwood until she retained a lawyer and then she went to the police to tell her story to them. R. 263, l. 22 – 264, l. 12.

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<sup>2</sup> Derrick's blood was found on the carpet of the bedroom. R. 600, l. 16 – 604, l. 6.

<sup>3</sup> A projectile was ultimately recovered from inside the wall. R. 353, ll. 7 – 23.

<sup>4</sup> Derrick's blood was found in the trunk of Shaniyah's car. R. 619, l. 4 – 620, l. 21; R. 621, l. 8 – 622, l. 8.

<sup>5</sup> Derrick's blood was found in the trunk of Bacon's car. R. 623, l. 9 – 625, l. 17.

## ARGUMENT

The trial judge erred in allowing the state to admit a photograph of Appellant sitting on a co-defendant's car while displaying his hands in a manner consistent with "gang signs" because the photograph was improper character evidence, and the probative value was substantially outweighed by the danger of unfair prejudice.

### **Relevant Facts**

The state sought to introduce a photograph of Appellant that was obtained from his Facebook page. R. 477, ll. 4 – 14; State's Ex. 93 (Facebook Records of Sha'Kel Dixon). Defense counsel objected under Rule 404 and 403, SCRE. R. 477, l. 15 – 479, l. 6. Specifically, counsel argued that "anyone who has common experience with some of these types of pictures, would recognize some of the stuff that he's doing as allegedly being throwing gang signs." Counsel argued that the photograph of Appellant was improper character evidence and that it was much more prejudicial than probative. R. 479, ll. 7 – 12.

The solicitor responded that the photograph was taken the day after the alleged murder and showed Appellant sitting on top of Bacon's car which was parked outside Barnwell's home. The photograph was relevant then to tie Appellant to the co-defendants. R. 480, l. 21 – 481, l. 5. The trial judge overruled counsel's objection and stated that there could be no testimony interpreting the way Appellant was holding his hands. R. 483, ll. 22 – 24. The photograph was then admitted and shown to the jury. R. 484, ll. 9 – 16.

### **Discussion**

Rule 404(b) of the South Carolina Rules of Evidence provides: "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the

existence of a common scheme or plan, the absence of mistake or accident, or intent.” “It is well established that evidence of other crimes or prior bad acts is inadmissible to show criminal propensity or to demonstrate the accused is a bad individual.” State v. Gillian, 360 S.C. 433, 443, 602 S.E.2d 62, 67 (Ct. App. 2004). Furthermore, in order to be admissible, “[t]he bad act must logically relate to the crime with which the defendant has been charged.” Id.

If the prior bad act which the state seeks to introduce against the defendant is not the subject of a criminal conviction, then “evidence of the bad act must be clear and convincing.” State v. Stokes, 381 S.C. 390, 404, 673 S.E.2d 434, 441 (2009). Prior bad character evidence that is otherwise admissible under Rule 404(b) is still subject to the balancing test under Rule 403. Id. Under Rule 403 of the South Carolina Rules of Evidence, relevant evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.” “Unfair prejudice means an undue tendency to suggest [a] decision on an improper basis.” State v. Spears, 403 S.C. 247, 253, 742 S.E.2d 878, 881 (Ct. App. 2013).

In Vasquez v. State, 388 S.C. 447, 464-465, 698 S.E.2d 561, 570 (2010), this Court held that trial counsel was ineffective in failing to object to the solicitor’s closing argument in which he described the defendant, a Muslim, as a domestic terrorist and referenced the terrorist attacks against the United States on September 11, 2001. This Court found that “the solicitor’s statements improperly evoked religious prejudice and, thus, served only to inflame the passions and prejudice of the jury.” Id. at 460, 698 S.E.2d at 567. Furthermore, the Fourth Circuit recently found that the government’s use of an ethnic stereotype against an alleged drug trafficker, who happened to be Hispanic, was constitutionally improper. United States v. Garcia-Lagunas, 835 F.3d 479, 488 (4th Cir. 2016).

Similar to Vasquez and Garcia-Lagunas, here, the suggestion in the photograph was that Appellant was a member of a criminal gang evoking the stereotype that as a member of a gang Appellant must be guilty of criminal activity. The admission of the photograph was an improper attack on Appellant's character where he had not put his character at issue. See Rule 404, SCRE; State v. Brown, 344 S.C. 70, 73, 543 S.E.2d 552, 553 (2001) ("Character evidence is not admissible to prove the accused possesses a criminal character or has a propensity to commit the crime with which he is charged."); State v. Council, 335 S.C. 1, 12 n.6, 515 S.E.2d 508, 514 n.6 (1999) ("an accused must introduce evidence of his character at trial before the prosecution can attack it.").

Furthermore, any probative value in the photograph of tying Appellant to Barnwell and Bacon was substantially outweighed by the danger of unfair prejudice and was inadmissible pursuant to Rule 403, SCRE. There was no mention or allegation of the alleged murder of Derrick as having been gang related. Therefore, there was no probative value in showing a photograph of Appellant displaying "gang signs." However, the photograph was unfairly prejudicial because it was likely to inflame the passions and prejudices of the jury. In U.S. ex rel. Clemons v. Walls, 202 F.Supp.2d 767, 774-78 (N.D. Ill. 2002), reversed on other grounds by, Clemons v. McAdory, 58 Fed.Appx. 657 (7th Cir. 2003), the United States District Court of the Northern District of Illinois held that the admission of gang-related evidence deprived the defendant of his due process right to a fair trial. The Clemons Court recognized the "substantial risk of unfair prejudice attached to such evidence, [and that] evidence of gang membership is likely to be damaging to a defendant in the eyes of the jury and that gangs suffer from poor public relations." 202 F.Supp.2d at 775. "[G]angs generally arouse negative connotations and often invoke images of criminal activity and deviant behavior. There is therefore always the

possibility that a jury will attach a propensity for committing crimes to defendants who are affiliated with gangs or that a jury's negative feelings toward gangs will influence its verdict.”

Id.

In State v. Sobers, this Court correctly affirmed the trial judge's decision to exclude evidence that the victim and some witnesses were affiliated with a gang because the evidence was irrelevant. 404 S.C. 263, 266, 744 S.E.2d 588, 589 (Ct. App. 2013). In Sobers, the defendant sought to introduce photographs from Facebook which showed the victim and some witnesses “flashing gang signs.” Id. Sobers testified at his trial that he was sitting in his car when a man named Trey confronted him about comments Sobers allegedly made about Trey's sister. After Trey walked away from Sobers' car, a fight broke out between the victim and another man. Sobers believed this fight was a gang initiation. After the fight was over, Sobers said that several of the people involved swarmed his car and opened the doors. Thinking he was going to be killed, Sobers fired his gun. Id. at 265, 744 S.E.2d at 589.

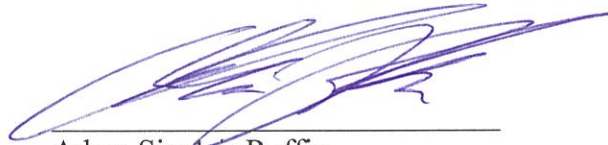
Sobers contended that the gang affiliation evidence was relevant to the issue of self-defense because he believed the initial fight was a gang initiation. Id. at 266, 744 S.E.2d at 590. The trial judge concluded that the gang affiliation evidence was irrelevant to the issue of self-defense because Sobers' fear was based on the group approaching his car and not to their alleged gang activity. Id. This Court affirmed the trial judge's decision to exclude the evidence because Sobers had not testified that his fear was based on the groups alleged gang affiliation and therefore the evidence was not relevant to self-defense. Id. at 268, 744 S.E.2d at 590-91.

In Appellant's case, there was no testimony that any of the witnesses or defendants were associated with a gang and gang affiliation was not relevant to any issue at trial. While no one testified that Appellant was in a gang, the photograph strongly insinuated that he was because it

showed him “flashing gang signs.” The trial judge may have failed to appreciate the prejudicial nature of the photograph of Appellant because the trial judge stated that they way Appellant was holding his hands “doesn’t mean anything to me.” R. 483, ll. 22 – 24. Respectfully, this response from the trial judge was improper given the serious nature of the charges against Appellant and the significant unfair prejudice that would inevitably come from portraying Appellant as a gang member. The trial judge erred in admitting the photograph of Appellant displaying his hands in a manner consistent with “gang signs” because the photograph was improper character evidence, and any probative value was substantially outweighed by the danger of unfair prejudice.

**CONCLUSION**

By reason of the foregoing argument, Appellant's convictions should be reversed, and this case remanded to the Aiken County Court of General Sessions for a new trial.



Adam Sinclair Ruffin  
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of July, 2022.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Honorable Clifton Newman, Circuit Court Judge

THE STATE,

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V.

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APPELLANT.

APPELLATE

CASE NO. 2021-000948

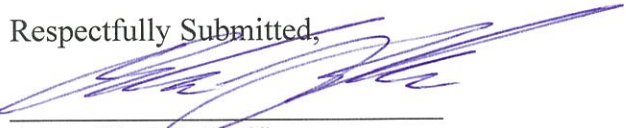
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Sha'kel Raheem Dixon states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Clifton Newman, which was held on August 16 - 20, 2021, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Sha'kel Raheem Dixon.

Respectfully Submitted,



Adam Sinclair Ruffin  
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of July, 2022.

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APPELLATE CASE NO. 2021-000948  
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**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**  
\_\_\_\_\_

Appellant proposes the following be included in the Record on Appeal:

- (1) Indictments;
- (2) August 11, 2021, entire transcript;
- (3) August 16-20, 2021, entire transcript;
- (4) State's Exhibit No. 93 (Facebook Records of Sha'Kel Dixon)

I certify that this designation contains no matter which is irrelevant to this appeal.



Adam Sinclair Ruffin  
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ATTORNEY FOR APPELLANT

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**CERTIFICATE OF COUNSEL**

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



Adam Sinclair Ruffin  
Appellate Defender

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APPELLANT.


APPELLATE CASE NO. 2021-000948

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CERTIFICATE OF SERVICE

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Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Sha'kel Raheem Dixon, #385800, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 27th day of July, 2022.



Adam Sinclair Ruffin  
Appellate Defender

ATTORNEY FOR APPELLANT