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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LAURENS COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2022-001626
State v. Eubanks, Ct. App. Opinion No. 5933 (filed August 10, 2022)

The State, ...Respondent,

v.

Michael Cliff Eubanks, ...Petitioner.

APPENDIX VOLUME III OF III

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Eubanks further argues the circuit court erred in allowing the State to call him down from the witness stand to demonstrate how Child wiggled on his lap. We find this error unpreserved.

Eubanks claimed his relationship with Child was a normal father-daughter relationship and denied inappropriately touching her. Eubanks testified he did not tell Child to sit on his lap in the barn and he was embarrassed about what happened. During his testimony, the State asked Eubanks to step down and show the jury how Child wiggled on his lap. Eubanks objected:

> [Eubanks]: Your Honor, I don't—I don't know if this is a proper demonstration even because it's—having never heard of it before.
>
> [The State]: I want to see it demonstrated.
>
> THE COURT: If he's able to pull it off, then he's able to pull it off. Let's see if he can do it. Go ahead.

Eubanks did not argue before the circuit court that this demonstration was "inflammatory and prejudicial," as he now asserts on appeal, and we find this general objection at trial was insufficient to put the circuit court on notice of the grounds for his argument. *See State v. Jennings*, 394 S.C. 473, 481, 716 S.E.2d 91, 95 (2011) ("An objection must be made on a specific ground.").

V. The State's Closing Argument

Eubanks next asserts he is entitled to a new trial because the State's closing argument was improper and highly prejudicial. Eubanks admits he did not contemporaneously object to the statements he now challenges but argues a narrow exception to our preservation rules permits an appellate court to consider such "dehumanizing" statements. We disagree.

Eubanks contends the following aspects of the State's closing arguments were improper and inflammatory:

> - "Do y'all remember Mitchell [sic] twerking Eubanks? He's not here today. I looked for him after his examination yesterday. It was pathetic. I looked for him. I wanted to talk to him but he was out the door."

- The State's "mocking" of Eubanks about his liking the articles in his pornographic materials, his favorite "story lines," and his sexual interests.

- The State's references to Eubanks as "grinning Cliff" and "smirking smiling Eubanks."

"In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal." *Dunbar*, 356 S.C. at 142, 587 S.E.2d at 693–94. "[E]ven in the absence of a contemporaneous objection, a new trial motion should be granted in flagrant cases where a vicious, inflammatory argument results in clear prejudice." *Toyota of Florence, Inc. v. Lynch*, 314 S.C. 257, 263, 442 S.E.2d 611, 615 (1994). Yet, our supreme court later added, "*Toyota* and the line of cases preceding it concern abuse of a witness or litigant. Accordingly, we now clarify that our holding in *Toyota* excuses the failure to make contemporaneous objection only where the challenged argument constitutes abuse of a party or witness." *Dial v. Niggel Assocs., Inc.*, 333 S.C. 253, 259, 509 S.E.2d 269, 272 (1998). The court further clarified in *Dial* that "[u]nder *Toyota*, the issue of inflammatory argument must be raised to the trial judge by way of post-trial motion to preserve the issue for appeal." 333 S.C. at 257, 509 S.E.2d at 271.

Eubanks did not object during the State's closing argument, nor did he raise this issue in his posttrial motion for a new trial. Thus, we find Eubanks's challenges to the State's closing argument are not preserved for our review. *See State v. Young*, 364 S.C. 476, 494, 613 S.E.2d 386, 395–96 (Ct. App. 2005) (noting that under *Toyota*, flagrant, abhorrent conduct toward a party or witness must be raised to the trial court by way of a post-trial motion, and issue was not preserved because the appellant failed to do so), *aff'd as modified on other grounds*, 378 S.C. 101, 661 S.E.2d 387 (2008).

VI. Motion for a Continuance

Eubanks contends the circuit court erred in denying his request for a continuance to find an expert to analyze his damaged iPhone, which he produced a week before trial began. He further asserts the court erred in denying him a mid-trial continuance for him to call his physician, Dr. Joanne Brownlee, to testify about a medical report he sought to introduce.

"The trial court's denial of a motion for a continuance will not be disturbed on appeal absent a clear abuse of discretion." *State v. Wrapp*, 421 S.C. 531, 535, 808 S.E.2d 821, 823 (Ct. App. 2017) (quoting *State v. Ravenell*, 387 S.C. 449, 455, 692 S.E.2d at 554, 557 (Ct. App. 2010)). "Generally, a motion for continuance should be made at the time the underlying reason for such becomes known." *State v. Nelson*, 431 S.C. 287, 304, 847 S.E.2d 480, 489 (Ct. App. 2020).

a. Damaged iPhone

Pretrial, and before the jury was sworn, Eubanks moved to continue the trial to allow an expert to examine his broken iPhone. The State noted Eubanks turned over the iPhone the week before trial but the phone was so severely damaged, the parties were unable to access it. Eubanks claimed he wanted to contact a cell phone expert in North Carolina to see if he could access the data on the phone.

Eubanks argued the iPhone would be important if Child testified she saw pornography on his cell phone—as she disclosed in her forensic interview. Eubanks wanted an expert to examine the iPhone so that he could show there was nothing inappropriate on it. Trial counsel was unaware that the State did not have the iPhone until a few weeks before trial. When the circuit court asked Eubanks why he had not sent the phone to the North Carolina expert himself, his counsel responded, "[W]ell, one, SLED is cheaper than the guy in North Carolina. Right? Or whoever they sent it to. Right? In all honesty, . . . I did not know they didn't get his phone from him." The circuit court denied Eubanks's request for a continuance, noting the iPhone related to a collateral matter and raising a concern about authentication of the device.

When Eubanks moved for the continuance, the State agreed it would not elicit testimony about his cell phone searches. However, Eubanks referenced the iPhone during his cross-examination of Child. Notably, Eubanks could not identify any specific information on the iPhone that might be helpful to him, other than the purported absence of pornographic internet searches. We find the circuit court did not abuse its discretion in denying Eubanks a continuance to retain an expert to access a damaged device he possessed during the months prior to trial. *See, e.g.*, *State v. Meggett*, 398 S.C. 516, 523, 728 S.E.2d 492, 496 (Ct. App. 2012) (finding circuit court did not abuse its discretion in denying defendant's motion for a continuance to test certain evidence because he "had a significant period of time to obtain the testing and his failure to do so was a result of his own inaction and not a lack of preparation time").

b. Dr. Brownlee

Mother testified she and Eubanks had a great sex life until her 2013 accident. She claimed Eubanks told her he was unable to achieve an erection due to problems with high blood pressure and low testosterone.

During Eubanks's testimony, he sought to introduce a medical report prepared by his physician, Dr. Joanne Brownlee. The State had never seen the report and asserted Dr. Brownlee's testimony was necessary for the document's admission. Eubanks claimed he did not know the report would be relevant until that day of trial. The circuit court noted the potential authentication issue with the document and stated it would be best for Eubanks to call Dr. Brownlee to testify. Still, the circuit court clarified Eubanks could testify about his own physical condition and what he reported to his doctor. The circuit court briefly recessed late in the afternoon so Eubanks could contact Dr. Brownlee. Following this recess, Eubanks testified he suffered from erectile dysfunction and low testosterone.

At the end of the day, Eubanks stated he would contact Dr. Brownlee first thing the next morning; however, the following morning, Eubanks moved for a directed verdict. After a brief discussion, the circuit court noted, "Technically, you had not rested before you made your directed verdict motion, but you did indicate in chambers that you did not intend to call additional witnesses." Eubanks responded, "Now that you mention that, we did contact Dr. Brownlee this morning. Her office is closed. . . . I would actually request the Court continue this case to Monday so that we can have Dr. Brownlee available."

We find the circuit court did not abuse its discretion in denying Eubanks's motion to continue the remainder of the trial so that Eubanks could attempt to obtain Dr. Brownlee's testimony. Despite Eubanks's claim that he was unaware his medical condition would be relevant, he was prepared to use Dr. Brownlee's medical report at trial. And, as the circuit court noted, because Eubanks did not provide Dr. Brownlee's name as a potential witness, there was a risk that the jury could have contained some of her patients. Therefore, we find the circuit court acted within its discretion in declining to postpone the remainder of the trial.

VIII. Juror Bias

Eubanks argues the circuit court erred in failing to discharge a member of the jury, Bailey, after the juror revealed he was a realtor and had in the past sold a house to one of Child's relatives. Eubanks also argues the circuit court erred in denying his

motion for a new trial without convening a hearing to question this juror when Eubanks learned after the trial that Bailey was "Facebook friends" with Investigator Hunnicutt and with the grandmother of a witness.

"All criminal defendants have the right to a trial by an impartial jury." *State v. Coaxum*, 410 S.C. 320, 327, 764 S.E.2d 242, 245 (2014) (quoting *State v. Woods*, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001)).

> To protect both parties' right to an impartial jury, the trial court must conduct voir dire of the prospective jurors to determinate whether the jurors are aware of any bias or prejudice against a party, as well as to "elicit such facts as will enable [the parties] intelligently to exercise their right of peremptory challenge."

Id. (alteration in original) (quoting *Woods*, 345 S.C. at 587, 550 S.E.2d at 284).

"We review a ruling on a new trial motion based on a juror's alleged concealment during voir dire for abuse of discretion." *State v. Tucker*, 423 S.C. 403, 410, 815 S.E.2d 467, 471 (Ct. App. 2018). The circuit court should grant a mistrial based on a juror's concealment of information only when "absolutely necessary." *Coaxum*, 410 S.C. at 327, 764 S.E.2d at 242 (quoting *State v. Kelly*, 331 S.C. 132, 142, 502 S.E.2d 99, 104 (1998)). "In order to receive a mistrial, the defendant must show error and resulting prejudice." *Kelly*, 331 S.C. at 142, 502 S.E.2d at 104.

A new trial due to a juror's concealment during voir dire "is warranted when: (1) the juror intentionally concealed information, and (2) the information withheld would have triggered a challenge for cause or been material to a party's choice to use a preemptory challenge." *Tucker*, 423 S.C. at 411, 815 S.E.2d at 471. "[I]ntentional concealment occurs when the question presented to the jury on voir dire is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable." *Id.* (alteration in original) (quoting *State v. Galbreath*, 359 S.C. 398, 404 n.2, 597 S.E.2d 845, 848 n.2 (Ct. App. 2004)). "[A] juror who intentionally conceals is presumptively biased." *Id.* "Unintentional concealment, . . . , occurs where the question posed is ambiguous or incomprehensible to the average juror, or where the subject of the inquiry is insignificant or so far removed in time that the juror's failure to respond is reasonable under the circumstances." *Coaxum*, 410 S.C. at 325 n.4, 764 S.E.2d at 244 n.4 (omission in original) (quoting *Woods*, 345 S.C. at 588, 550 S.E.2d at 284).

During jury selection, the circuit court read a list of potential witnesses and asked if any member of the panel was related by blood or marriage to, or had a close business or social relationship with, a potential witness. No member stood in response. Eubanks did not indicate any witnesses were omitted from the list, nor did he argue the circuit court failed to read his list of witnesses.

Bailey was the first juror selected, and Eubanks did not challenge his selection. Eubanks used eight of his ten preemptory challenges on other potential jurors. The circuit court selected Bailey to be the foreperson because he was the first juror seated.

After opening statements, Bailey realized his ex-wife was related to members of Child's biological father's family (the Lyons family). Bailey disclosed that he and his ex-wife had been divorced for eleven years but noted he was a real estate agent and had sold one of the family members a house approximately two years before the trial. Bailey averred his prior relation to the Lyons family would not affect his ability to be fair and impartial. After a bench conference, the circuit court asked Bailey to which family member he sold the house, and Bailey responded that he sold an aunt a house two years prior. The circuit court then called the rest of the jury back into the courtroom and stated, "The jury is back. I think we're good" and instructed the State to call its first witness.

Eubanks later argued he was entitled to a new trial because after the trial, he learned Bailey was Facebook friends with Investigator Hunnicutt and with a witness's grandmother. In denying the motion for a new trial, the circuit court found being a Facebook friend with someone does not necessarily rise to the level of "a close business or social relationship" and noted Bailey became friends on Facebook with Investigator Hunnicutt only after the trial had ended. The circuit court further held Bailey's Facebook friendship with a witness's grandmother was discoverable prior to trial and recognized it would be difficult to impanel a jury with "absolutely no ties" to any witnesses because Laurens County is an "interconnected community." The circuit court found a posttrial hearing was unnecessary due to its inquiry with Bailey at the beginning of the trial when the issue with the house sale arose.

First, we find Eubanks's argument that the circuit court should have excluded Bailey as a juror based on a real estate transaction involving a member of the Lyons family is likely unpreserved. After Bailey brought to the court's attention that his ex-wife was related to members of the Lyons family and that he sold an aunt a home, the circuit court asked the State and Eubanks if they had any

additional voir dire for the jury. Eubanks stated, "Yeah," and a bench conference was held. The substance of the bench conference was not placed on the record, and no further discussion followed at this time regarding Bailey. However, we address the merits of this argument as the circuit court later addressed the juror issue in its order denying Eubanks's motion for a new trial.

We find the circuit court acted within its discretion in declining to remove Bailey due to his remote relationship with the Lyons family. Bailey's initial concealment of the prior family connection was unintentional. During voir dire, the circuit court asked if any member of the jury panel was related to a potential witness by blood or marriage or if they had a close business or social relationship with a potential witness. When listing the witnesses, the circuit court referred to Mother by her married name, Eubanks. Child and Brother would have been very young when Bailey was connected to the Lyons family through his ex-wife because the two divorced eleven years prior to trial. Therefore, Bailey may not have realized the connection until he heard during opening statements that Mother's nickname was "Deanie" and that Child and Brother's father was Josh Lyons. Mother testified Josh struggled with substance abuse and left when she was seven months pregnant with Child, and he was not involved in the children's lives. Accordingly, Bailey's relationship with the Lyons family via his ex-wife was "so far removed in time that the juror's failure to respond is reasonable under the circumstances." *See Coaxum*, 410 S.C. at 325 n.4, 764 S.E.2d at 244 n.4 (quoting *Woods*, 345 S.C. at 588, 550 S.E.2d at 284). Eubanks contends he would have used a peremptory strike had he known this information before jury selection. However, Bailey's ex-wife's relation to the Lyons family and the fact that Bailey sold a home to a Lyons aunt does not suggest he had a "close business or social relationship" with a potential witness—particularly when the person to whom he sold the home was not a witness at trial. Significantly, Bailey told the circuit court he could be fair and impartial in adjudicating Eubanks's innocence or guilt.

Further, the fact that Bailey was a Facebook friend of Investigator Hunnicutt and the grandmother of a witness is not problematic under the circumstances presented here. In response to Eubanks's new trial motion, the State notified the circuit court of Investigator Hunnicutt's statements that Bailey requested to be his Facebook friend after the trial concluded and that "he had no idea who the guy was." Moreover, the fact that Bailey was a Facebook friend of an individual who did not testify does not indicate he had a "close business or social relationship" with a witness. As there is no suggestion that Bailey deliberately concealed information during voir dire and the social media connections are tangential, we find the circuit court did not abuse its discretion in declining to replace him on the jury or in

denying the motion for a new trial without convening a hearing to further question the juror.

IX. Lesser Included Offense

In declining to charge the jury with second-degree assault and battery as a lesser included offense of third-degree CSC with a minor, the circuit court cited the court of appeals' unpublished opinion in *State v. Hernandez* as guidance. There, the defendant argued the circuit court erred in failing to instruct the jury "regarding the lesser-included offenses of assault and battery in the first and second degrees when the offenses are lesser included offenses of CCSM [CSC with a minor] in the second degree and the evidence supported the instructions." *State v. Hernandez*, Op. No. 2018-UP-343 (S.C. Ct. App. Filed Sep. 26, 2018) at 3. This court disagreed, finding second-degree assault and battery did not satisfy the elements test for inclusion as a lesser included offense of CSC with a minor in the second degree. The court further recognized that "had the Legislature intended for assault and battery in the first and second degrees to be lesser-included offenses of CCSM, it could have so provided." *Id*. at 5.

The supreme court affirmed as modified, *State v. Hernandez*, 428 S.C. 257, 261, 834 S.E.2d 462, 464 (2019) (per curiam), but addressed whether assault and battery of a high and aggravated nature (ABHAN) is still a lesser included offense of CSC after the Legislature's 2010 codification of the assault and battery crimes. Finding ABHAN is no longer a lesser included offense of CSC subsequent to the enactment of the Omnibus Crime Reduction and Sentencing Act, the court affirmed the circuit court's denial of the charge requests. *Id.* at 261, 834 S.E.2d at 464 ("Now that the Legislature has codified all degrees of assault and battery crimes, and has particularly set forth which offenses are lesser included offenses, we no longer see the need to ignore the elements test. We now hold ABHAN is not a lesser included offense of CSC.").

Section 16-3-600(D) of the South Carolina Code (2015) provides,

> (1) A person commits the offense of assault and battery in the second degree if the person unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so, and:

> (a) moderate bodily injury to another person results or moderate bodily injury to another person could have resulted; or
>
> (b) the act involves the nonconsensual touching of the private parts of a person, either under or above clothing.
>
> (2) A person who violates this subsection is guilty of a misdemeanor, and, upon conviction, must be fined not more than two thousand five hundred dollars, or imprisoned for not more than three years, or both.
>
> (3) Assault and battery in the second degree is a lesser-included offense of assault and battery in the first degree, as defined in subsection (C)(1), assault and battery of a high and aggravated nature, as defined in subsection (B)(1), and attempted murder, as defined in Section 16-3-29.

Here, the circuit court properly denied Eubanks's request to charge second-degree assault and battery as a lesser included offense of third-degree CSC with a minor because the plain language of the statute does not list third-degree CSC with a minor as one of the offenses of which second-degree assault and battery is a lesser included offense. *See* S.C. Code Ann. § 16-3-600(D)(3). As the court stated in *Hernandez*, if the Legislature had intended to classify second-degree assault and battery as a lesser included offense of CSC third with a minor, it would have provided such in the statute.

X. Cumulative Error

Finally, Eubanks contends he is entitled to a new trial based on the cumulative errors at trial. The State argues this issue is not preserved for our review.

"The cumulative error doctrine provides relief to a party when a combination of errors, insignificant by themselves, has the effect of preventing the party from receiving a fair trial, and the cumulative effect of the errors affects the outcome of the trial." *State v. Beekman*, 405 S.C. 225, 237, 746 S.E.2d 483, 490 (Ct. App. 2013). "An appellant must demonstrate more than error in order to qualify for

reversal pursuant to the cumulative error doctrine; rather, he must show the errors adversely affected his right to a fair trial to qualify for reversal on this ground." *Id.* The cumulative error doctrine is subject to the rule that an issue must be raised to and ruled upon by the circuit court. *Id.* at 236, 746 S.E.2d at 489.

Eubanks did not raise the cumulative error doctrine before the circuit court or in his motion for a new trial. Therefore, this argument is not preserved for our review. *See Dunbar*, 356 S.C. at 142, 587 S.E.2d at 693–94 ("Issues not raised and ruled upon in the trial court will not be considered on appeal."). In any event, we find Eubanks has not demonstrated that the posited errors, even when considered together, deprived him of a fair trial. *See e.g.*, *State v. Daise*, 421 S.C. 442, 467, 807 S.E.2d 710, 722–23 (Ct. App. 2017) (noting any errors by the circuit court were not prejudicial and did not combine to affect Daise's right to a fair trial).[4]

Conclusion

Based on the foregoing, Eubanks's convictions are

AFFIRMED.

KONDUROS and GEATHERS, JJ., concur.

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[4] We decline to address Eubanks's request for guidance regarding the court reporter's change of employment following his trial but prior to the completion of the trial transcript. The South Carolina Appellate Court Rules provide a process for challenging the accuracy of transcripts. *See* Rule 607(i), SCACR (addressing retention of primary and backup tapes and the time for a party to challenge the accuracy of the transcript); Court Reporter Manual published by South Carolina Court Administration, https://www.sccourts.org/courtreporter/CourtReporterManual.pdf. At Eubanks's request, Court Administration conducted an independent review of the transcript and required the correction of "proofreading errors that included word misspellings and grammar, punctuation, and typographical errors." This court can provide no further relief regarding the court reporter or the transcript, and it would be inappropriate to issue an advisory opinion that does not affect the outcome of the case.

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM LAURENS COUNTY
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Appellate Case No. 2018-001684

The State, ...Respondent,

v.

Michael Cliff Eubanks, ...Appellant.

Petition for Rehearing

Pursuant to Rule 221(a), SCACR, Michael Cliff Eubanks petitions the Court for rehearing because this Court overlooked or misapprehended set forth in the petition.

Question I

***State v. Schumpert*, 312 S.C. 502, 435 S.E.2d 859 (1993), and similar cases, should be overruled (or the holdings in *Schumpert* and similar cases limited) to the extent that those holdings allow a prosecution expert witness to offer an opinion about whether a complaining witness suffers from trauma, when that expert's opinion is largely based on the hearsay statements of the complaining witness, because that type of opinion testimony is inconsistent with *State v. Simmons*, 423 S.C. 552, 816 S.E.2d 566 (2018) and the *State v. Kromah*, 401 S.C. 340, 737 S.E.2d 490 (2013) line of cases.**

This Court did not address this issue, likely because it "lacks the authority to rule against prior published precedent from our supreme court, but is bound by the decisions of the supreme court." *State v. Cheeks*, 400 S.C. 329, 342, 733 S.E.2d 611, 618 (Ct. App. 2012), *affirmed as modified on other ground by State v. Cheeks,* 408 S.C. 198, 758 S.E.2d 715 (2014); *see also* S.C. Const. Art. V, § 9. Mr. Eubanks, however, reassert the arguments

on this issue contained in his Final Brief of Appellant and Final reply Brief of Appellant. Mr. Eubanks also takes this opportunity to point out to this Court that it could recognize limits the Supreme Court has already placed on the *Schumpert* line of cases in Simmons and the *Kromah* line of cases.

Question II

The trial judge erred by admitting evidence of J.L.'s Post-Traumatic Stress Disorder when the "probative value [of this evidence was] substantially outweighed by the danger of unfair prejudice," pursuant to Rule 403, SCRE, and the prosecution used this evidence in its closing argument to bolster the credibility J.L.'s testimony, thereby denying Cliff Eubanks due process of law in contravention of the Fourteenth Amendment to the United States Constitution and Article I, § 3 of the South Carolina Constitution.

Although this Court recognized the applicability of the line of cases including *Briggs v. State,* 421 S.C. 316, 806 S.E.2d 713 (2017*), State v. Kromah,* 401 S.C. 340, 737 S.E.2d 490 (2013), *and State v. McKerley,* 397 S.C. 461, 725 S.E.2d 139 (Ct. App. 2012) (Slip Opinion at 7), this Court misapplied the Supreme Court of South Carolina's precedent in *State v. Makins*, by ignoring the Court's limitation and warning to the bench and bar:

> While we find no improper bolstering occurred in this case, we repeat our warning in *Anderson*[1] about dual experts. Using one witness as both a characteristics expert and the treatment witness is a risky undertaking. This issue might have been avoided completely had the State called a blind characteristics expert, a path the trial court repeatedly encouraged the State to follow. Instead, the State chose to proceed with Rich acting as a dual expert. While we rule in the State's favor on these facts, this opinion should not be construed as a retreat from our warning in *Anderson*.

433 S.C. 494, 505, 860 S.E.2d 666, 672 (2021). Once this Court heeds that warning, the need to reverse the trial court is apparent.

[1] *State v. Anderson*, 413 S.C. 212, 776 S.E.2d 76 (2015).

Initially, this is not a case where the State chose to proceed without a blind expert. The State called Shauna Galloway-Williams as a blind expert. This Court's opinion does not acknowledge Ms. Galloway-Williams's testimony. Once this Court recognizes this is not a case where the State relied on a "dual expert," it becomes apparent that the State relied on Samantha Black and Dr. Eman Sharawy to bolster the child's testimony and vouch for her credibility. The testimony of Shauna Galloway-Williams complied with the constraints of the procedure approved of in *Anerson* and *State v. Brown,* 411 S.C. 332, 768 S.E.2d 246 (Ct.App.2015). Indeed, similar testimony by Ms. Galloway-Williams has been approved by our appellate courts. *E.g. State v. Jones*, 423 S.C. 631, 817 S.E.2d 268 (2018); *Brown, supra*. If the prosecution had limited its presentation of trauma evidence to the testimony of Ms. Galloway-Williams, then this question would not be before this Court in this appeal.

The testimony of Samantha Black and Dr. Eman Sharawy, however, crossed the line into impermissible bolstering and vouching for the credibility of J.L. This Court also overlooks significant aspects of the testimony of Ms. Black and Dr. Sharawy.

Regarding Ms. Black, this Court's opinion does not discuss that the child's "allegations" and "trauma narrative" solely focused on the child's allegations that Mr. Eubanks committed all three degrees of criminal sexual conduct with a minor. According to the testimony of the child and Ms. Black, the counseling was directly related to childs's allegations that Cliff Eubanks sexually abused her. The child shared with Ms. Black the first, last, and worst incidents of the alleged sexual abuse in order to prepare a "trauma narrative," a redacted version of which was admitted into evidence. Although referencing the "trauma narrative" (Slip Opinion at 6), this Court's opinion does not acknowledge that

the "trauma narrative" specifical referenced the allegations of sexual abuse. Ms. Black testified she made notes about J.L.'s statements about her allegations of abuse and claimed trauma symptoms.

Regarding Dr. Sharawy, this Court overlooks the significance of the connection of her testimony with the testimony of Ms. Black. Although acknowledging Dr. Sharawy reviewed Ms. Black's notes (Slip Opinion at 7), this Court does not acknowledge that those notes included the allegations of sexual abuse. Nor does this Court acknowledge that the jurors were aware the "trauma narrative" and the child's allegations to Ms. Black were allegations that Mr. Eubanks sexually abused the child. Because Ms. Black's notes referenced the sexual abuse, Dr. Sharawy's reliance on those notes was a direct reference to the allegations of sexual abuse. This Court, accordingly, erred by holding Dr. Sharawy "did not reference sexual abuse" and "did not testify as to any specific traumatic event as precepting Child's PTSD." Slip Opinion at 8. The prosecution cannot use two witnesses to do what the State cannot do with one witnesses

This Court did not acknowledge *State v. Simmons,* where the Supreme Court held the "hearsay testimony [of a medical doctor] ventured far beyond the parameters of Rule 803(4), SCRE,[2] for much of the testimony was unrelated to medical diagnosis or treatment." 423 S.C. 552, 567, 816 S.E.2d 566, 574 (2018). The Supreme Court expressly declined to "sanction the State's use of Dr. Simmons as a conduit for this glaringly

[2] Rule 803(4), SCRE, providing an exception to the hearsay rule, provides, "Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment; provided, however, that the admissibility of statements made after commencement of the litigation is left to the court's discretion."

inadmissible hearsay to be brought before the jury." 423 S.C. at 565, 816 S.E.2d at 573. The Court noted, "If this tactic were permitted, the legitimate use of the Rule 803(4), SCRE, medical diagnosis and treatment exception would be undermined and the general approach of Rule 801(d)(1)(D), SCRE,[3] would be thwarted." *Id.* (footnote added). Stated another way, an expert witness "recounting" of a complaining witness' "statements amounted to nothing more than 'hearsay shrouded in a doctor's white coat.'" *Id.*

Once this Court acknowledges the substance of the testimony of Ms. Black and Dr. Sharawy, then this Court must reject statement: "In their testimonies before the jury, neither Black nor Dr. Sharawy connected Child's PTSD to sexual abuse." Slip Opinion at 7. The combined testimonies of Ms. Black and Dr. Sharawy's "amounted to nothing more than 'hearsay shrouded in a doctor's white coat.'" *Simmons*, 423 S.C. at 565, 816 S.E.2d at 573.

This Court's Rule 403, SCRE analysis is disingenuous and inconsistent with the vouching analysis. As seen above, the vouching analysis pretends the testimonies of Ms. Black and Dr. Sharawy did not connect the child's PTSD to sexual abuse. Yet, this Court's Rule 403 analysis states, "The testimony of each was probative to show Child suffered some trauma and to refute Eubanks's contention that nothing happened, or that if anything inappropriate happened, it happened while both were asleep." Slip Opinion at 10. When the Court considers the testimonies of Ms. Black and Dr. Sharawy as a whole, it is impossible to reach the conclusion that "neither Black nor Sharawy testified about the specific trauma that caused Child's PTSD or precipitated her need for therapy." *Id*.

---

[3] 801(d)(1)(D), SCRE provides, "A statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is consistent with the declarant's testimony in a criminal sexual conduct case or attempted criminal sexual conduct case where the declarant is the alleged victim and the statement is limited to the time and place of the incident."

Question III

The trial judge erred by allowing the prosecution to question J.L. on re-direct examination about her knowledge of an "enormous tub of pornography" in response to defense counsel asking J.L. limited questions about the titles of two iPhone internet searches when this testimony was not relevant, pursuant to Rule 401, SCRE, improper character evidence pursuant to Rule 404(b), SCRE, and the prejudicial effect of the testimony substantially outweighed its probative value, pursuant to Rule 403, SCRE?

This Court held, "[T]he circuit court erred in finding Eubanks opened the door to Child's testimony on redirect about the pornography Eubanks kept in the storage building." This Court concluded the argentums raised on appeal under Ruled 401 and 404, SCRW were not raised in the trial court. This Court, however, never addressed the Rule 403, SCRE objection that was clearly raised at trial. R. 280.

This Court ultimately held, Mr.

> Eubanks was not prejudiced by the admission of this testimony because Child testified Eubanks never showed her the videos from the storage building. Child had already testified Eubanks showed her "dirty" videos on his iPhone and on the television in his bedroom, and the jury already knew Eubanks watched pornography on his own and in the presence of Child. Thus, any error in admitting the references to the videos Eubanks kept in the storage building was harmless.

Slip Opinion at 11-12. This holding implies the evidence was inadmissible. This Court should have analyzed whether the probative value of the evidence was substantially outweighed but the prejudicial effect of the evidence. Rule 403, SCRE. *See*, e.g,, *State v. Spears*, 403 S.C. 247, 742 S.E.2d 878 (Ct. App. 2013).

The evidence was not admissible because the prejudicial effect substantially outweighed its probative value pursuant to Rule 403, SCRE. Rule 403 protects an accused from "unfair prejudice" which is an "undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." *State v. Alexander*, 303 S.C.

377, 382, 401 S.E.2d 146, 149 (1991). Although arguing the evidence was admissible for a limited purpose, the prosecution used it to launch an emotional and merciless attack on Cliff Eubanks' character. The evidence should have been excluded, and this Court should order a new trial.

This Court also applied an incorrect harmless error analysis. "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 quotations omitted). This Court did not make a finding that the error was harmless beyond a reasonable doubt. Nor could it because of the manner in which the State used the evidence during the prosecutor's closing argument.

During closing arguments, the prosecution emphasized the container of pornography and the internet searches. The prosecutor argued Deanie Eubanks "didn't know about the enormous collection of pornography" or what her husband "was up to on the internet." R. 713. The prosecutor referred to the container as "that giant green tub of some of the most obscene pornography you've ever seen."[4] And, the prosecutor argued:

> I asked him about the porn. This was a classic response. Well, Mr. Scott, I just like the articles. I'm kind of a collector. Really, that's why I have them. I said well, what about all those DVDs in there. There's a bunch of them. Listen, I'm not some puritan, okay? I'm not saying there's anything wrong with pornography, but if on one hand you're saying I think hip-hop dancing is vulgar. I think this little girl is provocative. I think these dances are disgusting. How do you reconcile that with his interests? How do you do it? You can't. It makes no sense. Mr. Scott, I like the story lines in those movies. I said tell me about your favorite story lines. Oh, well that's personal.

[4] The jurors, of course, had not "seen" the pornography because the trial judge did not allow the container and its contents to be introduced into evidence because of the trial court's concerns about unfair prejudice under Rule 403, SCRE. R. 354-57.

R. 724-25.

> And:
>
> I suspect if you're looking at that much pornography and you're making it that much a part of your life, because I think pornography is progressing. If you start off with Playboy it can begin and end there, or you can choose to up it a notch and get into more hardcore stuff. And then you can go into other rabbit holes. Into that genre or that genre. And you can look at all kinds of stuff until it's an unhealthy addiction. And you're looking on the internet and your sexual desires become such that you can't control them. *I don't know what makes somebody become like a Cliff Eubanks.*

R. 736 (emphasis added).

After defense counsel responded to the prosecutor's argument about pornography (R. 748, 752-53, 755-56), the prosecutor replied:

> Isn't it funny though that the same people who find hip hop dancing – and the lawyer said it was his opinion too that hip hop dancing was offensive. For some reason, they are just unoffended by an enormous collection of pornography. Of all kinds of depraved acts. They are unoffended by internet searches. They're unoffended by a Defendant that admits he is attracted to very young appearing girls.
>
> I'm sorry, y'all. I don't mean to – I've got to cover everything. I'm so scared that something he just said that makes absolutely no sense will gain traction. I hope it doesn't, and maybe I'm just arguing too hard. Some of the things I hear just blow my mind.

R. 767-68.

Question IV

The trial judge erred by allowing the prosecution to cross-examine Cliff Eubanks about his internet searches of legal adult pornography when such evidence did not "make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence," pursuant to Rule 401, SCRE, was inadmissible character and propensity evidence pursuant to Rule 404(b), SCRCP, and the "probative value [of this evidence was] substantially outweighed by the danger of unfair prejudice," pursuant to Rule 403, SCRE.

This Court held, "We find Eubanks's testimony that he did not intend to become aroused by Child's wiggling on his lap did not open the door to the State's questioning about his internet searches related to 'younger looking girls' because these acts do not arise from the same fact or transaction." Slip Opinion at 12. This Court, however, concluded the evidence was harmless. Once again, this Court did not make a finding "beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." *Tapp*, 398 S.C. at 389, 728 S.E.2d at 475. Nor could it because of the manner in which the State used this evidence during the prosecution's closing argument. The discussion of the State's closing argument in Section III above is incorporated by reference.

Question V

The trial judge erred by allowing the prosecutor to call Cliff Eubanks down from the witness stand to demonstrate to the jurors how J.L. was "wiggling" when she sat on his lap, when the only purpose for the demonstration was to humiliate Mr. Eubanks and to obtain fodder for the prosecution's closing argument that repeatedly mocked Mr. Eubanks.

This court held:

> Eubanks did not argue before the circuit court that this demonstration was "inflammatory and prejudicial," as he now asserts on appeal, and we find this general objection at trial was insufficient to put the circuit court on notice of the grounds for his argument. *See State v. Jennings*, 394 S.C. 473, 481, 716 S.E.2d 91, 95 (2011) ("An objection must be made on a specific ground.").

Slip Opinion at 13. Trial counsel's objection stated, "Your Honor, I don't know if this is a proper demonstration even because it's – have never heard of it before." R. 671-71. This objection was sufficient to preserve this issue for appellate review.

Question VI

This Court should grant Cliff Eubanks a new trial based on the Deputy Solicitor's highly inflammatory closing arguments that were a direct and dehumanizing attack on the character of Cliff Eubanks and his cousin Mitchell Eubanks.

This Court found this issue not preserved for appellate review. Slip Opinion at 14. During this appeal, Mr. Eubanks always acknowledged his trial counsel did not object to the Solicitor's highly inflammatory arguments. Final Brief of Appellant at 39-41. Rather, he argued, "even in the absence of a contemporaneous objection, a new trial motion should be granted in flagrant cases where a vicious, inflammatory argument results in clear prejudice." *Toyota of Florence, Inc. v. Lynch*, 314 S.C. 257, 263, 442 S.E.2d 611, 615 (1994) (citing *South Carolina Highway Dept. v. Nasim,* 255 S.C. 406, 179 S.E.2d 211 (1977)); *cf. Major v. Alverson*, 183 S.C. 123, 190 S.E. 449, 450 (1937) ("referring to defendant as a 'bare faced liar'" during closing argument required new trial). This narrow exception "excuses the failure to make a contemporaneous objection only where the challenged argument constitutes abuse of a party or witness," as it did in this case. *Dial v. Niggel Assocs., Inc.*, 333 S.C. 253, 259, 509 S.E.2d 269, 272 (1998). *And see Bennett v. Stirling*, 842 F.3d 319 (4th Cir. 2016) (held that state courts unreasonably determined that prosecutor's references to defendant during closing arguments were not appeals to racial prejudice and that his right to due process was not violated); *State v. Northcutt*, 372 S.C. 207, 222, 641 S.E.2d 873, 881 (2007) (Solicitor's closing argument "dehumanizing Appellant" required remand for new trial).

This court erred by not applying this narrow exception to our state's error preservation rules.

Question VII

The trial judge erred by not continuing the trial to allow time for examination of Cliff Eubanks' iPhone 5, thereby denying Mr. Eubanks his due process right to a fair trial and his Sixth Amendment rights to present a complete defense and confront and cross-examine J.L. about observing sexually explicit movies on this phone.

This Court held "[T]the circuit court did not abuse its discretion in denying Eubanks a continuance to retain an expert to access a damaged device he possessed during the months prior to trial." Slip Opinion at 15. Trial counsel explained he did not appreciate the significance of the evidentiary value of the cell phone prior to trial:

> [The child] did say in the forensic interview it was an iPhone. And maybe I didn't pay close enough attention to what phones they were analyzing. But it wasn't until I talked to my client a couple of weeks ago when I realized they did not have the phone that he actually had at about the time that this allegation was made.

R. 104. And, "I did not know they didn't get this phone from him." R. 106. This Court overlooked this portion of Mr. Eubank's motion.

This Court also concluded, "Eubanks could not identify any specific information on the iPhone that might be helpful to him, other than the purported absence of pornographic internet searches." Slip Opinion at 15. This reason is sufficient in order to allow time for the examination. The trial courts have a due process obligation "to control the order of its business to safeguard the rights of litigants." *State v. Langford*, 400 S.C. 421, 429, 735 S.E.2d 471, 475 (2012). When a defendant feels that his rights are prejudiced by reason of the calling of his case at any particular time, he may apply to the judge for a continuance." *State v. Mikell*, 257 S.C. 315, 322, 185 S.E.2d 814, 817 (1971); *and see* Rule 7, SCRCrimP.

Question VIII

The trial judge erred by not continuing the remainder of the trial until the following Monday so that Cliff Eubanks could call Dr. Joanne Brownlee as a witness to reply to Deanie Eubanks' testimony and corroborate Mr. Eubanks' medical condition.

This Court held:

> We find the circuit court did not abuse its discretion in denying Eubanks's motion to continue the remainder of the trial so that Eubanks could attempt to obtain Dr. Brownlee's testimony. Despite Eubanks's claim that he was unaware his medical condition would be relevant, he was prepared to use Dr. Brownlee's medical report at trial. And, as the circuit court noted, because Eubanks did not provide Dr. Brownlee's name as a potential witness, there was a risk that the jury could have contained some of her patients. Therefore, we find the circuit court acted within its discretion in declining to postpone the remainder of the trial.

Slip Opinion at 16. This Court overlooked the fact that the trial court could have addressed this concern with additional voir dire.

Questions IX and X

The trial judge erred by not excluding juror Tony Bailey from the jury panel after Mr. Bailey, a real estate agent, revealed he had sold a house to a relative of J.L, who was present in the courtroom for the trial, when this information was not available to Cliff Eubanks prior to jury selection and would have been the basis of a peremptory strike had this information been disclosed timely.

The trial judge erred by denying Cliff Eubank's motion for a new trial, without convening a hearing and taking testimony, after Cliff Eubanks learned that juror Tony Bailey is friends on Facebook with Darlene Newsome and Jared Hunnicutt when Mr. Bailey did not disclose this information in response to the voir dire questions by the trial court.

This Court held:

> Bailey's ex-wife's relation to the Lyons family and the fact that Bailey sold a home to a Lyons aunt does not suggest he had a "close business or social relationship" with a potential witness—particularly when the person to whom he sold the home was not a witness at trial. Significantly, Bailey told the circuit court he could be fair and impartial in adjudicating Eubanks's innocence or guilt.

Slip Opinion at 19.

Pursuant to the Sixth Amendment of the United States Constitution, Article I, Section 14 of the South Carolina Constitution, and S.C. Code Ann. § 14-7-1020, the tiral court has an obligation to place potential jurors on their oath and asked questions to determine whether any potential juror "has any interest in the cause, has expressed or formed any opinion, or is sensible to any bias or prejudice." Courts have long recognized the tricky nature of analyzing jurors' bias. *See Smith v. Phillips*, 455 U.S. 209, 221-2 (1982) (O'Connor, J., concurring) (recognizing that jurors may be incapable of acknowledging their own bias); *Crawford v. United States*, 212 U.S. 183, 196 (1909) ("Bias or prejudice is . . . an elusive condition of the mind . . . and it might exist in the mind of one . . . who was quite positive that he had no bias, and said that he was perfectly able to decide the question wholly uninfluenced by anything but the evidence"); *United States v. Burr*, 25 F. Cas. 49, 50 (D.Va.1807) (a person under the influence of personal prejudice "is presumed to have a bias on his mind which will prevent an impartial decision of the case, according to the testimony" for such person may declare that "notwithstanding these prejudices he is determined to listen to the evidence, and be governed by it; but the law will not trust him").

The possibility that a juror might not recognize his own bias is one of the reasons our General Assembly allows an accused ten preemptory challenges in a criminal sexual conduct with a minor case. S.C. Code Ann. § 14-7-1110. Even the unintentional withholding of this type of information warrants removal of the juror once it is discovered. *E.g. State v. Coaxum*, 410 S.C. 320, 764 S.E.2d 242 (2014) (juror's unintentional concealment of information regarding possible familial relationship with defendant warranted mid-trial removal).

This Court also held:

> [T]he fact that Bailey was a Facebook friend of Investigator Hunnicutt and the grandmother of a witness is not problematic under the circumstances presented here. In response to Eubanks's new trial motion, the State notified the circuit court of Investigator Hunnicutt's statements that Bailey requested to be his Facebook friend after the trial concluded and that "he had no idea who the guy was." Moreover, the fact that Bailey was a Facebook friend of an individual who did not testify does not indicate he had a "close business or social relationship" with a witness. As there is no suggestion that Bailey deliberately concealed information during voir dire and the social media connections are tangential, we find the circuit court did not abuse its discretion in declining to replace him on the jury or in denying the motion for a new trial without convening a hearing to further question the juror.

Slip Opinion at 19-20.

This Court erred by relying on the email from the Deputy Solicitor was error because "[a]court cannot consider facts appearing only in argument of counsel." *Shinn v. Kreul*, 311 S.C. 94, 102, 427 S.E.2d 695, 700 (Ct. App. 1993) (citing *Gilmore v. Ivey,* 290 S.C. 53, 58, 348 S.E.2d 180, 184 (Ct.App.1986). *Cf. McManus v. Bank of Greenwood*, 171 S.C. 84, 171 S.E. 473, 475 (1933) ("This court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered."). A hearing was necessary before the trial court could rule on this matter. *McCoy v. State*, 401 S.C. 363, 737 S.E.2d 623 (2013) ("evaluating the merits of a juror misconduct claim is a fact-intensive inquiry, which is most appropriately conducted after a hearing"). R. 6. *And see*, *e.g.*, *Remmer v. U.S.*, 350 U.S. 377 (1956); *Remmer v. U.S.*, 347 U.S. 227 (1954); *State v. Bryant*, 354 S.C. 390, 581 S.E.2d 157 (2003).

Question XI

The trial judge erred by declining to charge second degree-assault and battery as a lesser-included offense of third-degree criminal sexual conduct with a minor.

This Court erred by relying on *State v. Hernandez*, 428 S.C. 257, 259, 834 S.E.2d 462, 463 (2019) (Slip Opinion at 20-21), as that case did not address the issue of whether second-degree assault and battery is a lesser included of third-degree criminal sexual conduct with a minor.

This Court also erred by holding

> [T]he circuit court properly denied Eubanks's request to charge second-degree assault and battery as a lesser included offense of third-degree CSC with a minor because the plain language of the statute does not list third-degree CSC with a minor as one of the offenses of which second-degree assault and battery is a lesser included offense. See S.C. Code Ann. § 16-3-600(D)(3). As the court stated in Hernandez, if the Legislature had intended to classify second-degree assault and battery as a lesser included offense of CSC third with a minor, it would have provided such in the statute.

Slip Opinion at 21. A statutory offense can be a lesser included offense of another statutory offense without the General Assembly expressly making that designation. *See, e.g*. S.C. Code Ann. § 16-11-311, 312, and 313 (General Assembly not designating burglary offenses as lesser included offenses)

Question XII

This Court should reverse Cliff Eubanks' convictions and sentences and order a new trial based on the cumulative error doctrine.

This Court erred by holding the cumulative error doctrine must be raised at trial. Slip Opinion at 22. It is sufficient that each of the issues considered under the cumulative error doctrine be raised at trial.

As discussed above, once the Court reconsiders the issues, Mr. Eubanks has demonstrated multiple trial errors. This Court should reconsider the cumulative error doctrine after reconsidering the other issues raised in this appeal.

Question XIII

This Court should clarify the procedure to be followed when the court reporter assigned to record a trial accepts employment with one of the parties that participated in that trial prior to completing the trial transcript.

This Court erred by holding, "This court can provide no further relief regarding the court reporter or the transcript, and it would be inappropriate to issue an advisory opinion that does not affect the outcome of the case." Slip Opinion at 22, n. 4. This Court overlooks that fact that the State questioned the reliability of the transcript in the Final Breif of Respondent. In his Statement of Facts, Mr. Eubanks called this Court's attention to inconsistent testimony by State's Expert Shauna Galloway-Williams:

> Ms. Galloway-Williams initially testified, "[W]e would expect that a child or an adult is going to tell every single detail or every single event that they've experienced related to child abuse at one time." Tr. 378. Later she testified disclosure can be tentative, "which is where most children's disclosures fall, where they share some pieces of information but not all of it." She does not "expect a child to report every single detail of his or her abuse in one interview." Age, frequency of abuse, comfort level with the interviewer, knowledge of anatomy, and sexual knowledge could be factors. Children might delay disclosure of sexual abuse because of fear or relationship with the alleged perpetrator. Tr. 379-83.

Brief of Appellant, at 18-19.

The State's Brief counters:

> Contrary to [Mr. Eubanks'] assertion, it clearly appears Ms. Galloway-Williams misspoke or ***the transcript was inaccurate*** when she testified "So we refer to disclosure as a process, meaning that we would expect that a child or an adult is going to tell every single detail or every single even that they've experienced related to child abuse at one time."

Brief of Respondent, at 9 (fn. 2) (emphasis added).

CONCLUSION

For the reasons set forth in Mr. Eubanks Final Brief of Appellant, Final reply Breif of Appellant, and this petition, this Court should rehear this matter, reverse the trial court, and order a new trial.

IT IS SO MOVED.

Respectfully Submitted,

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September 9, 2022
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2018-001684

The State, ...Respondent,

v.

Michael Cliff Eubanks, ...Appellant.

Certificate of Service

I certify that I served this pleading on the State of South Carolina, by email, using counsel's primary email address listed in the Attorney Information System (AIS), as reflected below, on the date reflected below:

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September 9, 2022.

Subject: State v. Eubanks, Appellate Case No. 2018-001684
Date: Friday, September 9, 2022 at 1:56:46 PM Eastern Daylight Time
From: Charles Grose
To: William Blitch
Attachments: 2022 09 09 - Petition for Rehearing.pdf

Attached please find Mr. Eubank Petition for Rehearing that I am about to file electronically with the SC Court of Appeals, along with a copy of this email. Please let me know if you have any questions.

Hope you have a good weekend.

Best,
Charles

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The South Carolina Court of Appeals

The State, Respondent,

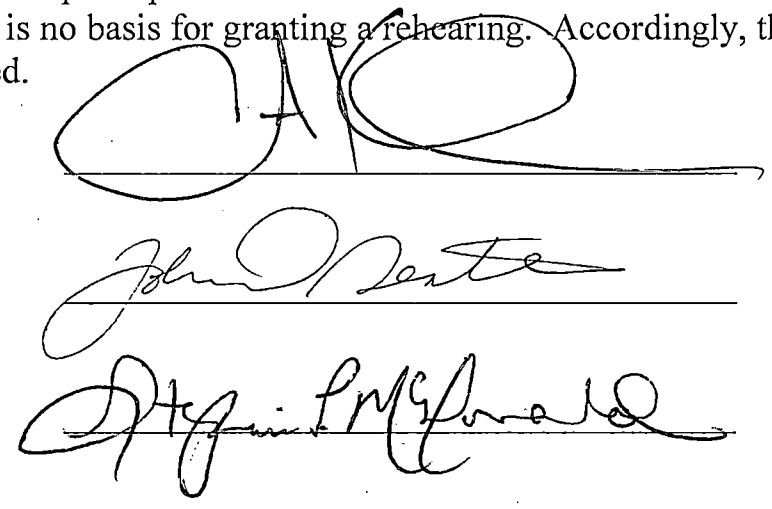
v.

Michael Cliff Eubanks, Appellant.

Appellate Case No. 2018-001684

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.

J.

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Columbia, South Carolina

cc:
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FILED
Oct 20 2022