

RECEIVED

Jan 19 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY  
The Honorable Kristi Lea Harrington, Circuit Court Judge

Appellate Case No. 2018-001269

THE STATE,.....RESPONDENT

v.

KENNETH LAMONT ROBERTSON, JR.,.....APPELLANT

**RESPONDENT’S PETITION FOR REHEARING**

On January 11, 2023, this Court issued a published opinion affirming in part, reversing in part, and remanding the Appellant’s convictions for murder and attempted murder. *State v. Robinson*, Op. No. 5960 (S.C. Ct. App. Filed January 11, 2023). In reversing the Appellant’s conviction for murder and attempted murder this Court found that the trial court erred in allowing evidence relating to the Appellant being a member of a street gang. Within this opinion this Court decided, “Because the gang-related evidence presented at Robinson’s trial was not slight, was not logically relevant to prove any motive or intent behind Victim’s murder, and the dangers of unfair prejudice and confusion it produced substantially outweighed any probative value, we find the trial court erred in denying Robinson’s motion to suppress such evidence.” *Robinson*, WL 151401, 8 (2023).

Pursuant to Rule 221(a) SCACR, Respondent, the State of South Carolina, respectfully petitions this Court for rehearing because this Court appears to have considered the gang evidence only on one critical point, motive, ignoring the fact that the gang evidence is also necessary to prove that this was not a murder in the sudden heat of passion. The State was obligated to prove malice existed in order to convince the trial court that a jury charge of voluntary manslaughter would be unlawful.

In their brief and during oral argument Appellant argued that he should have been entitled a jury instruction on the offense of voluntary manslaughter. Appellant argued the trial court erred in refusing the request to make this jury instruction. Within their brief the Appellant argues that his co-defendant committed murder in the sudden heat of passion; therefore, under the doctrine of accomplice liability the trial court was required to give a jury instruction on the law of voluntary manslaughter. To prove this was a retaliatory measure and not some offense due to a sudden heat of passion the gang war evidence was necessary.

This Court's relies on their prior opinion of *State v. Johnson*, 433 S.C. 550, 860 S.E.2d 696 (2021). In *Johnson*, this Court decided that gang evidence was relevant to reveal the planning and agreement proving something other than the defendant's propensity for criminal conduct. *Johnson* revealed that the defendant was a leader of a gang and ordered the hit on an individual, making the issue of gang activity relevant. This is not the only reason a defendant being a gang member makes evidence relevant, or that its probative value outweighs any prejudicial effect.

To receive a jury instruction for the offense of voluntary manslaughter there had to be evidence that the co-defendant acted in a sudden heat of passion upon sufficient legal provocation. *State v. Pittman*, 427 S.C. 246, 249, 830 S.E.2d 904, 905 (2019). This shooting was due to a retaliation for an attempted gang hit committed by a rival gang.

According to trial testimony the first drive by shooting occurred at the Appellant's residence around midnight. (R. p. 934 l. 5-11). After this shooting police were called. Only one officer responded who took photographs of the damage to co-defendant's Anthony Simmons vehicle, this officer also recovered shell casings. (R. p. 936 l. 23-25). After this occurred Mr. Simmons called two other individuals, Derrontae and Sidney. Mr. Simmons instructed Sidney to bring a gun. (R. p. 1054 l. 10-13). Sidney brought a .40 caliber handgun which eventually became the murder weapon. (R. p. 1054 l. 10-13). Appellant also called his uncle nicknamed "fur" who arrived at the scene with two more people. (R. p. 1480 l. 1-20; p. 1056 l. 4). Around 1:30 a.m., a second car arrived shooting at everyone there. This is when everyone involved got into their vehicles and a high-speed chase ensued with the Appellant shooting at rival gang members.

There were three vehicles chasing the individuals that committed the shooting. In one of these vehicles was Mr. Simmons and the Appellant. Two of the vehicles backed off the chase, however, the vehicle containing the Appellant and his co-defendant continued. (R. p. 1078 l. 8; p. 1082 l. 2-3). This decision to continue proves that this was not sudden heat of passion but premeditation.

Gang activity was the only reason for the shooting and car chase. To present proof that the Appellant was not entitled to a voluntary manslaughter jury instruction, the defendant's association with the street gang had to be revealed. Evidence of a prior bad acts is not admissible unless its proponent can demonstrate it has a legitimate purpose. *Johnson*, 433 S.C. at 555, 860 S.E.2d at 699. This Court distracted by the fact that the State argued that the gang evidence was introduced to prove motive, however, there were other reasons for the introduction of such evidence.

The Respondent also does not wish to relinquish the fact that this evidence was essential to prove motive and malice. It is the Respondent's opinion that this Court failed to fully review

the reasons for the introduction of the street gang evidence and the purpose it served to reveal to the jury exactly why this incident occurred, and why an innocent victim was unjustly murdered.

Appellant with his co-defendants were shot at twice by rival gangs due to an ongoing gang war. That was the reason for the introduction of the prior evidence revealing the number of crimes committed in that area recently. There was no other reason for those individuals to ride by that residence and shoot at the Appellant and co-defendants twice within a span of a few hours. Even though after the first shooting they did call law enforcement, co-defendant Simmons still called other individuals instructing them to bring guns to retaliate. The introduction of the gang war evidence revealed an ongoing pattern that existed for months prior to this shooting. The evidence revealed one side would strike, then the other would retaliate. Under Rule 404 of the South Carolina Rules of Evidence, motive, and a common scheme of plan are purposes for the State to be allowed to introduce evidence of a prior bad act.<sup>1</sup> The gang evidence reveals that there was a motive to retaliate due to the previous strike, and it was common for these two gangs to operate in this fashion. If not the result of gang war that existed in this community, what would be the purpose of Simmons to phone calling for other reinforcements, and then getting into a high-speed chase involving three vehicles? The individuals shot at Simmons's car not at any other individual. So, there was no known purpose for all of these individuals to chase one vehicle, unless there existed a pattern of retaliation during this gang war.

This Court also ruled that the gang evidence was not admissible due to the fact it would tend to confuse the jury. This Court discussed the fact that during the trial, evidence was presented

---

<sup>1</sup> 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. Rule 404(b) SCRE.

regarding all the prior incidences of this gang war that occurred within this community. As an example, this Court raised the evidence of two murders and various shootings that occurred in Appellant's neighborhood. This Court ruled that the unfair prejudice and confusion outweighed the scant probative value this evidence brought to the table. *Robinson*, 2023 WL 151401, at 8. There was nothing confusing about the evidence of prior murders and crimes committed by these gang members against each other during the course of this gang war. This only presented and explained a pattern that existed within this community. Once one side struck the other retaliated. That is what occurred in the instant crime. The difference is that an innocent bystander was unfortunately murdered. This evidence was necessary to reveal to the jury that an existing ongoing gang war was the impetus to the entire incident.

The State is never certain of what will be presented by the defense. Therefore, the State should have the ability to raise any relevant evidence that would prove that the Appellant committed the crime beyond a reasonable doubt. Criminal trials are an adversarial proceeding. Evidence raised by the State does prejudice the Appellant, what the Court must look for is if the evidence unduly prejudices the Appellant, and if its probative value overrides any prejudicial effect.

Since this court failed to consider that the gang evidence was necessary for the denial of a jury instruction on voluntary manslaughter, and the necessity in proving that this was a common pattern of gang retaliation, motive, and the existence of malice, Respondent wishes this Court would reconsider their previous decision.

**CONCLUSION**

For the reasons stated above, Respondent issue this petition for rehearing pursuant to Rule 221(a) SCACR, and requests this Court reinstate Appellant’s conviction for murder and attempted murder.

Respectfully submitted,

ALAN WILSON  
Attorney General

DONALD J. ZELENKA  
Deputy Attorney General

MELODY J. BROWN  
Senior Assistant Deputy Attorney General

TOMMY EVANS, JR.  
Assistant Attorney General

SCARLETT A. WILSON  
Solicitor, Ninth Judicial Circuit

By: s/ Tommy Evans, Jr.  
Tommy Evans, Jr.  
Office of the Attorney General  
P.O. Box 11549  
Columbia, South Carolina 29211  
(803) 734-6305

ATTORNEY FOR RESPONDENT

Columbia, South Carolina  
January 19, 2023

RECEIVED

Jan 19 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM CHARLESTON COUNTY  
The Honorable Kristi Lea Harrington, Circuit Court Judge

Appellate Case No. 2018-001269

---

THE STATE,

Respondent,

vs.

KENNETH LAMONT ROBINSON, JR.,

Appellant.

---

**CERTIFICATE OF SERVICE**

---

I, Tommy Evans, Jr., Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Petition for Rehearing and Certificate of Service have been forwarded to Appellant's counsel, Susan B. Hackett, Esq., via email today, January 19, 2023 to [shackett@sccid.sc.gov](mailto:shackett@sccid.sc.gov), and to her assistant, Chris Stock [cstock@sccid.sc.gov](mailto:cstock@sccid.sc.gov), and to John H. Blume, Esq. at [john@blumelaw.com](mailto:john@blumelaw.com).

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

This 19<sup>th</sup> day of January 2023.

s/Tommy Evans, Jr.  
Tommy Evans, Jr.  
Assistant Attorney General

## Brandy Rankin

---

**From:** Brandy Rankin  
**Sent:** Thursday, January 19, 2023 3:55 PM  
**To:** Hackett, Susan; 'john@blumelaw.com'  
**Cc:** Tommy Evans, Jr.; Stock, Chris  
**Subject:** The State vs Kenneth Lamont Robinson, Jr. - Appellate Case No. 2018-001269  
**Attachments:** Cover Letter to Petition for Rehearing (signed) - 1-19-23 (03198490xD2C78).pdf; Petition for Rehearing (Adobe Version) (03198435xD2C78).pdf; Certificate of Service to Petition for Rehearing (Adobe Version) (03198469xD2C78).pdf

**Follow Up Flag:** Worldox

Dear Ms. Hackett and Mr. Blume,

Please find attached the Respondent's Cover Letter to the South Carolina Court of Appeals, Petition for Rehearing, and Certificate of Service. These documents will be filed with the South Carolina Court of Appeals today, January 19, 2023 along with a copy of this email. Thank you.

Sincerely,

Brandy Rankin

Mrs. Brandy Rankin, Legal Assistant to Tommy Evans, Jr.  
South Carolina Attorney General's Office | Capital Litigation |  
Office 803-734-7240 | Fax 803-734-4035 |  
P.O. Box 11549 | Columbia, SC 29211



This email, along with any attachments, is considered confidential and may be legally privileged. If you have received it in error notify the sender immediately by reply email and then delete this message from you system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. This email, and attachments, are subject to FOIA requests.



**RECEIVED**

**Jan 19 2023**

**SC Court of Appeals**

ALAN WILSON  
ATTORNEY GENERAL

January 19, 2023  
(via e-filing only)

The Honorable Jenny A. Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

Re: The State vs. Kenneth Lamont Robinson, Jr.  
Appellate Case No. 2018-001269  
Tommy Evans, Jr. - State Bar No. 65282

Dear Ms. Kitchings:

Please find attached the Respondent's Petition for Rehearing, Certificate of Service and Email Proof of Service in the above captioned case. Please file these documents with your court. Thank you in advance for your assistance.

Sincerely,

Brandy Rankin, Legal Assistant to:  
Tommy Evans, Jr.  
Assistant Attorney General

TE:brb

cc: John H. Blume, Esq. (via email only – [John@blumelaw.com](mailto:John@blumelaw.com))  
Susan B. Hackett, Esq. (via email only – [shackett@sccid.sc.gov](mailto:shackett@sccid.sc.gov))