

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**S.C. SUPREME COURT**

Certiorari to the Court of Appeals  
Appeal from Greenwood County  
Frank R. Addy, Jr., Circuit Court Judge

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Opinion No. 5951 (S.C. Ct. App. filed November 23, 2022)

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THE STATE,

RESPONDENT

V.

XZARIERA OKEVIS GRAY

PETITIONER.

APPELLATE CASE NO. 2023-000253

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APPENDIX

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**THE STATE OF SOUTH CAROLINA**  
**In The Court of Appeals**

The State, Respondent,

v.

Xzariera Okevis Gray, Appellant.

Appellate Case No. 2019-001109

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Appeal From Greenwood County  
Frank R. Addy, Jr., Circuit Court Judge

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Opinion No. 5951  
Heard June 9, 2022 – Filed November 23, 2022

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**AFFIRMED IN PART AND REMANDED**

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Appellate Defenders Susan Barber Hackett and Sarah Elizabeth Shipe, both of Columbia, for Appellant.

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**KONDUROS, J.:** Xzariera Okevis Gray appeals his convictions for murder and possession of a weapon during the commission of a violent crime. Gray asserts the

trial court erred by (1) denying him immunity from prosecution pursuant to the Protection of Persons and Property Act (the Act),<sup>1</sup> (2) admitting into evidence a surveillance video of the shooting, and (3) denying his motion for a new trial without a hearing. We remand for the trial court to make specific findings that support its determination of whether Gray is, or is not, entitled to immunity under the Act.

## FACTS

During the early morning hours of August 26, 2017, officers from the Greenwood Police Department heard a gunshot. Believing the gunshot had come from nearby Gray Street, the officers drove down that street and observed several people outside of Ricky Grant's residence. A woman one street over flagged the officers down and directed them to Demetrius "Meatball" Fueller (Victim). Victim was lying on the ground and unable to communicate with the officers, but they could see he had been shot in the abdomen because he was not wearing a shirt. Paramedics arrived and transported Victim to the hospital, where he went into cardiac arrest. Hospital personnel were unable to resuscitate Victim. An autopsy revealed a single gunshot wound to Victim's abdomen caused him to bleed to death.

In May 2018, a Greenwood County grand jury indicted Gray for murder and possession of a weapon during the commission of a violent crime. Prior to trial, Gray sought immunity from prosecution pursuant to the Act. At the immunity hearing, Gray testified that on August 25, 2017, he was visiting with Grant at Grant's house on Gray Street. Gray recalled that around midnight, he and Grant got into Grant's car to go to a neighborhood nightclub. According to Gray, Victim approached Grant's car and knocked on the window. When Victim learned Grant and Gray were going to the nightclub, he asked to join.

Gray then described an altercation with Victim that had occurred in Grant's yard a couple of weeks earlier. Gray claimed that Victim's brother chased him around a car with a gun. After Gray escaped into Grant's house, Victim's brother left. Shortly after, Victim arrived with the gun. Gray stated that he went back into Grant's house while others in Grant's yard persuaded Victim to leave.

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<sup>1</sup> See S.C. Code Ann. §§ 16-11-410 to -450 (2015).

Gray testified that Grant was aware of the prior incident and asked him if he was comfortable with Victim riding with them to the nightclub. Gray told Grant that it was his car, and Grant let Victim in; the three went to the nightclub together. Once there, Grant and Victim entered the nightclub while Gray remained in the parking lot socializing with friends.

After a few hours, Grant and Gray rode back to Grant's house without Victim, and they continued visiting into the early morning hours of August 26, 2017. Gray testified that Victim returned to Grant's house about an hour later and confronted him about the prior incident. Grant told Victim and Gray to go outside because they were being loud. Gray stated that he went outside and started to walk home but returned to Grant's house so that Grant would drive him home. Gray claimed that Victim followed Gray back into Grant's house, and Grant again told them to go outside.

Gray recalled that when he and Victim returned to the porch, Victim swung at him; however, Gray was inconsistent on whether Victim hit him or missed. Gray testified that he and Victim then began "tussling" in Grant's yard. During the scuffle, Gray claimed that he saw Victim reach for a gun in his waistband. Gray testified that he also reached for the gun and briefly struggled with Victim for control of the weapon.

According to Gray, he gained control of the gun and stumbled backward. Gray claimed that Victim began to charge at him as he stumbled backwards. Gray admitted that he shot Victim once, and Victim then ran away. Gray also testified that he and Victim were the only two people in Grant's yard at the time of the shooting.

To contradict Gray's testimony, the State presented testimony from Grant and another witness, Raymond Kennedy. Grant recalled that Victim hid his gun in the bushes before entering the nightclub, and both Grant and Kennedy testified the argument between Gray and Victim arose over Victim's missing gun rather than their prior altercation. Kennedy also testified that Gray's brother was standing next to Gray when Gray shot Victim.

Additionally, the State introduced a surveillance video that showed the shooting. One of Grant's neighbors, Jeovani Vacquec, testified that he owned and operated the security system that recorded the video. Vacquec stated that he had eight

cameras around his house that all fed into a hard drive that recorded the images and displayed them on a monitor. Vacquec recalled that officers viewed the video from the camera that faced Gray Street and collected the portion that showed the shooting. Vacquec testified that he knew the cameras functioned properly because he checked them regularly. Vacquec explained that the time stamp on the video was incorrect because he did not set the correct date or time when he installed the security system.

Gray objected to the video's admission because the time stamp on the video did not match the alleged time of the incident and Vacquec was not contemporaneously watching his monitor as the shooting occurred. The trial court determined the incorrect time stamp did not affect the video's admissibility because Vacquec explained that he did not set the time when he installed the security system. The trial court also found that Vacquec authenticated the video and admitted it for the hearing.

At the conclusion of the immunity hearing, Gray argued he was entitled to immunity because he was in a place he had a right to be and he satisfied the Act's requirements. While the State conceded Gray was in a place he had a right to be, it argued that whether Gray satisfied the elements of self-defense was a jury question due to the conflicting evidence. The State noted the discrepancy between Gray's testimony that Victim possessed the gun in his waistband and Grant and Kennedy's testimony that the argument between Gray and Victim arose over Victim's missing gun. The State also emphasized that the surveillance video contradicted Gray's testimony because it showed that when Gray shot Victim, a third individual was standing beside him and Victim was not rushing towards him.

The trial court found that Gray was in a place he had a right to be as Grant's invited guest; however, the trial court ruled that Gray failed to prove by a preponderance of the evidence that he was entitled to immunity. The trial court explained that its ruling was "based upon the varying evidence and the open question of whether [Gray was] entitled to a self-defense [jury] instruction . . . ." The trial court also stated that it was "passing upon the credibility of the witnesses who have testified . . . ."

In response, Gray cited *State v. Cervantes-Pavon*<sup>2</sup> and asserted that "just because conflicting evidence as to an immunity issue exists does not automatically require the court to deny immunity. The court must sit as the fact-finder at [t]his hearing, weigh the evidence presented, and reach a conclusion under the Act." The trial court explained that if it "had a hundred percent or very firm belief" in Gray's version of events, "it would be a different outcome, obviously." The trial court elaborated, "[T]o the extent that [Gray's] testimony would have been corroborated by others who were present at the scene, the [c]ourt might be more inclined to say that the defense has met the burden of proving it by the preponderance of the evidence." The trial court concluded that it declined Gray's motion "[i]n light of the conflicting evidence . . . and the open question of whether this is, in fact, a case of self-defense . . . ."

After the immunity hearing, Gray moved in limine to prohibit the State from presenting Vacquec's surveillance video to the jury. Gray reiterated his arguments that the video should not be admitted into evidence because the timestamp was incorrect and Vacquec was not contemporaneously watching his monitor as the shooting occurred. Additionally, Gray argued the video was not admissible under Rule 403, SCRE, because its low quality made it difficult to discern what it showed.

Regarding authentication, the State conceded that no one could testify as to what happened on the video; however, the State argued that Vacquec could testify that his security system recorded the video and the camera faced Gray Street. Regarding Rule 403, SCRE, the State argued that the surveillance video was relevant because it showed the shooting. The State maintained that the quality of the video was a matter of its credibility, which was something for the jury to weigh. The State also contended that the video would not cause confusion and asserted it would help the jury better understand the witnesses' testimony.

The trial court again admitted the surveillance video over Gray's objections. The trial court ruled that the State had sufficiently authenticated the video because Vacquec stated he owned and operated the security system and explained the video's incorrect timestamp. The trial court also acknowledged Gray's Rule 403, SCRE, argument but ruled that the video depicted relevant information.

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<sup>2</sup> 426 S.C. 442, 451, 827 S.E.2d 564, 569 (2019).

The State began its case-in-chief by calling Vacquec as a witness. Vacquec's testimony was consistent with his immunity hearing testimony, and the surveillance video was published to the jury. The State also presented Grant and Kennedy as witnesses again, and their testimony was consistent with their immunity hearing testimony.

After the State rested, Gray took the stand in his own defense. Gray's testimony was mostly consistent with his immunity hearing testimony, but Gray stated that Victim initially got upset when he returned from the nightclub because Gray and Grant were laughing at him. Gray claimed that Victim then confronted him about their prior altercation. Gray also testified that Victim's punch missed, Victim was wearing a shirt or tank top during their scuffle, and Gray closed his eyes when he fired the gun.

The jury began deliberating at 12:40 p.m. on May 9, 2019. Immediately before the jury exited the courtroom at 12:18 p.m., the trial court informed them that lunch would arrive in about an hour. At 5:43 p.m., the jury sent the trial court a note that contained its third request to watch a portion of the video. The trial court played that portion of the video and then gave the jury a laptop that could play the entire video so they could watch it while deliberating. The note also indicated that some jurors were concerned about their children at home. The trial court allowed the jurors to call their families but directed them to continue their deliberations afterward.

At 8:58 p.m., the trial court received another note requesting another phone call and a smoke break. The note also stated "we are pretty deadlocked at 10:2." The trial court gave the jury a choice between resuming deliberations that evening or reconvening the following Monday.<sup>3</sup> The trial court explained that "[t]here is no set limitation on jury deliberations. However long you deliberate is entirely in your discretion."

The jury continued deliberating. At 10:50 p.m., the jury returned guilty verdicts for both murder and possession of a weapon during the commission of a violent crime. Given the late hour, the trial court delayed Gray's sentencing hearing. On May 14, 2019, the trial court sentenced Gray to consecutive sentences of thirty-five

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<sup>3</sup> May 9, 2019, was a Thursday, and May 10, 2019, was a state holiday.

years' imprisonment for murder and five years' imprisonment for possession of a weapon during the commission of a violent crime.

On May 23, 2019, Gray filed a motion for a new trial, alleging that the jury was unduly influenced to reach a verdict. Gray noted that the jury deliberated for about ten-and-a-half hours without dinner and informed the trial court that it was "pretty deadlocked at 10:2" two hours before it returned the guilty verdicts. Additionally, Gray presented one juror's Facebook post that stated she "just couldn't leave without a verdict." Gray requested a hearing on the motion so the trial court could ask each juror if they felt undue pressure to reach a verdict.

The trial court denied Gray's motion for a new trial without a hearing. The trial court stated that the jury indicated it was "struggling to reach a verdict" but not deadlocked. The trial court noted that "a lengthy deliberation, standing alon[e], does not warrant conducting an inquiry into the nature of the jury deliberations." Regarding the lack of dinner, the trial court explained that it had ordered the jury a late lunch, and the jury room contained "crackers, snacks, and drinks" the jurors could consume. Additionally, the trial court determined that Gray's requested inquiries were prohibited by Rule 606, SCRE, because they "would cause the jurors to reveal the subject matter of their deliberations." The trial court found that the juror's Facebook post did "not cause the [c]ourt sufficient concern to warrant the drastic step of questioning all twelve . . . jurors." This appeal followed.

## **STANDARD OF REVIEW**

"The conduct of a criminal trial is left largely to the sound discretion of the trial judge, who will not be reversed in the absence of a prejudicial abuse of discretion." *State v. Reyes*, 432 S.C. 394, 401, 853 S.E.2d 334, 337 (2020) (quoting *State v. Bryant*, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007)). "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." *Id.* at 401, 853 S.E.2d at 338 (quoting *Bryant*, 372 S.C. at 312, 642 S.E.2d at 586).

## **LAW/ANALYSIS**

### **I. Immunity under the Protection of Persons and Property Act**

Gray asserts the trial court erred by failing to sit as the fact-finder at his immunity hearing. We agree.<sup>4</sup>

"A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which [appellate] court[s] review[] under an abuse of discretion standard of review." *State v. Jones*, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016) (quoting *State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013)). "[T]he relevant inquiry is . . . whether the accused has proved an entitlement to immunity under the Act by a preponderance of the evidence." *State v. Andrews*, 427 S.C. 178, 181, 830 S.E.2d 12, 13 (2019). "[J]ust because conflicting evidence as to an immunity issue exists does not automatically require the [trial] court to deny immunity; the [trial] court must sit as the fact-finder at this hearing, weigh the evidence presented, and reach a conclusion under the Act." *Cervantes-Pavon*, 426 S.C. at 451, 827 S.E.2d at 569. "[T]he [trial] court, in announcing its ruling, should at least make specific findings on the elements on the record." *State v. Glenn*, 429 S.C. 108, 123, 838 S.E.2d 491, 499 (2019).

Here, the trial court impermissibly abdicated its role as the fact-finder at Gray's immunity hearing. The trial court was required to make specific findings supporting its decision that this court could review on appeal. While the trial court ruled that Gray did not prove by a preponderance of the evidence that he was entitled to immunity, the record contains no specific findings that support that determination. *Compare Andrews*, 427 S.C. at 182, 830 S.E.2d at 14 ("[W]hile the [trial] court may not have set forth every detail of its analysis in the record, the record [wa]s nevertheless adequate for a reviewing court to determine that the [trial] court applied the correct burden of proof and made findings that supported its denial of immunity consistent with a correct application of [our supreme court's] precedent."), *with State v. McCarty*, Opinion No. 28116 (S.C. Sup. Ct. filed Sep. 21, 2022) (Howard Adv. Sh. No. 34 at 38-39) (finding the court of appeals erred in upholding the trial court's denial of immunity because the trial court did not make specific findings that appellate courts could review).<sup>5</sup>

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<sup>4</sup> Because we remand, we do not address Gray's other contentions as to the immunity issue. See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (noting appellate courts need not address remaining issues when disposition of an issue is dispositive).

<sup>5</sup> In fairness to the learned trial judge, Gray's immunity hearing occurred before *Andrews* and *McCarty* were published.

The trial court's reasoning for denying Gray immunity reveals that it deferred to the jury rather than sit as the fact-finder at the immunity hearing. The trial court stated it was "passing upon the credibility of the witnesses who have testified" and twice explained that it denied Gray immunity due to the conflicting evidence and the "open question" of whether Gray was entitled to a self-defense jury instruction. The trial court concluded that "such matters are best left to the finders of fact, namely the trial jury." Consequently, the trial court failed to sit as the fact-finder at Gray's immunity hearing. Accordingly, we remand for the trial court to make specific findings that support its determination of whether Gray is, or is not, entitled to immunity under the Act.

## **II. Surveillance Video**

Gray asserts the trial court erred by admitting into evidence surveillance video of the shooting. We address his two arguments in turn.

### **A. Authentication**

Gray contends that the State failed to properly authenticate the video. We disagree.

"[E]vidence must be authenticated or identified in order to be admissible." *State v. Brown*, 424 S.C. 479, 488, 818 S.E.2d 735, 740 (2018). A witness with knowledge may authenticate evidence by testifying that "a matter is what it is claimed to be." Rule 901(b)(1), SCRE. "The authentication standard is not high, and a party need not rule out any possibility the evidence is not authentic." *State v. Green*, 427 S.C. 223, 230, 830 S.E.2d 711, 714 (Ct. App. 2019) (citation omitted), *aff'd as modified*, 432 S.C. 97, 851 S.E.2d 440 (2020). "The trial judge acts as the authentication gatekeeper, and a party may open the gate by laying a foundation from which a reasonable juror could find the evidence is what the party claims." *Id.*

The State authenticated the surveillance video with Vacquec's personal knowledge. Vacquec testified that he owned and operated the security system that recorded the video. Vacquec also testified that the camera that recorded the video faced Gray Street. Vacquec explained that the time stamp on the video was incorrect because he did not set the correct date or time when he set up the security system. It is irrelevant that Vacquec was not contemporaneously watching his monitor or at the

scene of the shooting; his personal knowledge sufficiently authenticated the video. Accordingly, we affirm as to this issue.

### **B. Rule 403**

Gray also contends that the surveillance video's limited probative value was substantially outweighed by the danger of confusing and misleading the jury. We disagree.

Relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury . . . ." Rule 403, SCRE. "'Probative value' is the measure of the importance of that tendency to the outcome of a case. It is the weight that a piece of relevant evidence will carry in helping the trier of fact decide the issues." *State v. Gray*, 408 S.C. 601, 610, 759 S.E.2d 160, 165 (Ct. App. 2014). "[T]he more essential the evidence, the greater its probative value." *Id.* (alteration in original) (quoting *United States v. Stout*, 509 F.3d 796, 804 (6th Cir. 2007)). "Thus, a court analyzing probative value considers the importance of the evidence and the significance of the issues to which the evidence relates." *Id.* "[T]he burden [is] on the opponent of the evidence to establish [its] inadmissibility." *State v. King*, 424 S.C. 188, 200 n.6, 818 S.E.2d 204, 210 n.6 (2018).

The surveillance video's probative value was not substantially outweighed by the danger of confusing or misleading the jury. The surveillance video was highly probative because it provided an alternative perspective of the shooting that was objective and neutral. Moreover, the surveillance video clearly contradicted some of Gray's testimony. Despite the dark image, the video clearly shows more than two people in and around Grant's yard at the time of the shooting. Therefore, the surveillance video was highly probative.

Additionally, the danger that the surveillance video would have confused the jury was limited. While the quality of the surveillance video made it difficult to discern what happened, the jury was able to replay the video, or portions of it, as many times as it wanted to. Therefore, allowing the jury to view the surveillance video was unlikely to cause confusion, and its probative value outweighed any danger that it would. Accordingly, we affirm as to this issue.

### **III. Motion for a New Trial**

Gray asserts the trial court erred by denying his motion for a new trial without a hearing. Gray contends he should have been allowed to ask all twelve jurors whether the length of their deliberations, lack of dinner, or their understanding of whether a verdict had to be rendered had an impact on their verdict. We disagree.

A posttrial motion "may, in the discretion of the court, be determined on briefs filed by the parties without oral argument." Rule 29(a), SCRCrimP. "Generally, juror testimony is not allowed regarding the deliberations of the jury or internal influences." *State v. Pittman*, 373 S.C. 527, 553, 647 S.E.2d 144, 157 (2007). However, "a juror may testify . . . whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror." Rule 606(b), SCRE.

Additionally, "where [an] allegation of improper internal influence potentially affects fundamental fairness, the court may accept juror testimony to ensure due process." *Pittman*, 373 S.C. at 553, 647 S.E.2d at 157. Our supreme court has recognized only two allegations that implicate fundamental fairness: (1) allegations that the jury's verdict was the result of racial or gender intimidation, *Winkler v. State*, 418 S.C. 643, 667-68, 795 S.E.2d 686, 699 (2016) (Hearn, J., concurring), and (2) allegations that the jury participated in premature deliberations, *State v. Aldret*, 333 S.C. 307, 509 S.E.2d 811 (1999). Allegations that jurors misunderstood the law are insufficient to implicate fundamental fairness. See *Pittman*, 373 S.C. at 555, 647 S.E.2d at 158 (2007) ("[A] jury's misapprehension of the law is not enough to impeach a verdict.").

The trial court did not abuse its discretion in denying Gray's motion for a new trial without a hearing. The trial court aptly recognized that Gray's requested inquiries are prohibited by Rule 606(b), SCRE. The juror's Facebook post did not indicate that any extraneous prejudicial information or outside influence had an impact on the jury's deliberations; it also did not indicate that Gray's verdict was reached as a result of racial or gender intimidation or that the jury began deliberating prematurely. Therefore, Gray's requested inquiries would have involved juror testimony about internal influences unrelated to fundamental fairness. Accordingly, we affirm as to this issue.

## CONCLUSION

The trial court did not abuse its discretion in admitting the surveillance video into evidence and denying Gray's motion for a new trial without a hearing. However, the trial court failed to sit as the fact-finder at Gray's immunity hearing. Accordingly, Gray's case is

**AFFIRMED IN PART AND REMANDED.**

**WILLIAMS, C.J. and VINSON, J., concur.**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

XZARIERA OKEVIS GRAY,

APPELLANT

APPELLATE CASE NO. 2019-001109

Appeal from Greenwood County

Honorable Frank R. Addy, Circuit Court Judge

Opinion No. 5951

PETITION FOR REHEARING

On November 23, 2022, this Court remanded Appellant's case to the trial court to make specific findings that support its determination of whether Appellant is entitled to immunity under the Protection of Persons and Property Act.<sup>1</sup> State v. Gray, Op. No. 5951 (S.C. Ct. App. filed Nov. 23, 2022) (Howard Adv. Sh. No. 41 at 34). This Court also affirmed (1) the trial court's admission of a surveillance video and (2) the denial of appellant's motion for a new trial without a hearing. Pursuant to Rule 221(a), SCACR Appellant respectfully requests this Court withdraw the opinion and reissue it with the portions concerning the issues that arose during the

<sup>1</sup> See S.C. Code Ann. §§ 16-11-410 to -450 (2015).

trial removed. Appellant requests this action so that his case may be remanded to the trial court for consideration of his request for immunity. If the trial judge grants immunity, then this Court's opinion regarding the legal issues that arose during trial is advisory in nature. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating that an appellate court need not address other issues when disposition of another issue is dispositive). An appellate court renders an advisory opinion when commenting on an issue will have no practical effect on the outcome of the case. Comm'r of Public Works v. S.C. Dept. of Health & Environmental Control, 372 S.C. 351, 363, 641 S.E.2d 763, 769 (Ct. App. 2007). "[A] court is not permitted to issue advisory opinions." McDill v. Nationwide Mut. Ins. Co., 368 S.C. 29, 32, 627 S.E.2d 749, 750 (Ct. App. 2006). If the trial judge denies his request for immunity, then the denial may be considered along with the legal issues that arose during trial in a subsequent appeal.

In the alternative to withdrawing and reissuing the opinion, Appellant respectfully requests rehearing pursuant to Rule 221(a), SCACR, on the two legal issues that arose during his trial considering the significant points overlooked and/or misapprehended by this Court discussed below.

### **Surveillance Video**

In its opinion affirming the trial court's admission of the surveillance video this Court found (1) the state properly authenticated the video and (2) the probative value of the video was not substantially outweighed by the danger of confusing or misleading the jury.

#### *Authentication*

This Court found Jeovani Vacquec's personal knowledge was sufficient to authenticate the surveillance video where he testified that he owned and operated the security system that

recorded the video, the camera that recorded the video faced the area where the shooting occurred, and the time stamp on the video was incorrect because he had not set the date or time when setting up the security system.

One of the most common ways for the proponent to authenticate evidence is through the testimony of a witness with knowledge that the “matter is what it is claimed to be.” See Rule 901(b)(1), SCRE. Another way to authenticate evidence is by showing the evidence contains “distinctive characteristics and the like.” Rule 901(b)(4), SCRE. “Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances” may serve to authenticate evidence. Id.; see also State v. Anderson, 386 S.C. 120, 129, 687 S.E.2d 35, 39-40 (2009) (finding a master fingerprint card authenticated where an expert explained the prints on the master card were taken at a correctional facility on a specific date, and assigned a unique state identifying number).

Here, Vacquec did not have personal knowledge sufficient to lay a foundation from which a reasonable juror could find the evidence was what the state claimed where he was not present at the scene shown on the video and was not watching the monitor at the time of the shooting. Additionally, the state conceded at trial, no witness could say the contents of the video were what the state purported them to be because no witness had personal knowledge of the events. At trial, Vacquec’s testimony was that he had eight cameras on his property and that he checked them “pretty regularly” to make sure they worked. R. 95, ll. 23-25; R. 96, ll. 10-11. He also testified that he installed the cameras without adjusting the date and time. R. 97, ll. 1-5. Vacquec testified that the cameras were constantly recording and after a few months the recordings “erase” and start over. R. 96, ll. 12-16.

However, Vacquec did not even know the name brand of the video system. He was

unable to describe how the system worked in even the most rudimentary of terms. Most importantly, he was unable to say if or how the system produced an accurate result as required by the plain language of Rule 901(b)(9), SCRE. Vacquec was simply unable to present the necessary foundation for the state to authenticate the video through personal knowledge.

In its opinion this Court cited to State v. Green, for the proposition that “the authentication standard is not high, and a party need not rule out any possibility the evidence is not authentic.” 427 S.C. 223, 230, 830 S.E.2d 711, 714 (Ct. App. 2019). Nonetheless, this case does not even meet the very low bar discussed in Green.

In Green, this Court held the state authenticated Facebook messages despite neither the sender nor the recipient testifying. Id. at 232-233, 830 S.E.2d at 715-716. Rather, a witness testified that a co-defendant, who was not on trial, used the name “Ruby Rina” on Facebook. Id. at 228, 830 S.E.2d at 713. In that case there were “numerous facts” linking the Facebook messages to the co-defendant and consequently to Green. Id. at 233, 830 S.E.2d at 715-716. This Court held “the content of the messages was distinctive enough that a reasonable jury could find [co-defendant] wrote them.” Id. at 233, 830 S.E.2d at 715. This Court held that “[t]aken together, these circumstances serve as sufficient authentication to meet the low bar Rule 901(b)(4), SCRE, sets.” Id. at 233, 830 S.E.2d at 716.

Here, unlike in Green, there was no additional circumstantial evidence presented by the state, through witnesses or other evidence, to establish the video was from the morning in question or that it was accurately recorded. The only evidence the state put forth was Vacquec’s limited testimony.

#### *Rule 403*

In the opinion, this Court found that the video was “highly probative because it provided

an alternative perspective of the shooting that was objective and neutral,” and that it clearly contradicted Appellant’s testimony because it showed more than two people in and around the yard at the time of the shooting. Notably, this Court stated that the quality of the video made it “difficult to discern what happened,” however, the jury was able to watch it numerous times making it unlikely to cause confusion.

“‘Probative’ means ‘[t]ending to prove or disprove.’” State v. Gray, 408 S.C. 601, 609, 759 S.E.2d 160, 165 (Ct. App. 2014). “‘Probative value’ is the measure of the importance of that tendency to the outcome of a case.” Id. at 610, 759 S.E.2d at 165. While relevant evidence and probative evidence are not synonymous, the two share many similarities as demonstrated through their definitions. The probative value of evidence is directly related to the how important that evidence is in assisting the jury in rendering a verdict. Id. Thus, when analyzing the probative value of evidence, the court must consider the importance of the evidence as it relates to the issues presented in the case. State v. Lee, 399 S.C. 521, 528, 732 S.E.2d 225, 228 (Ct. App. 2012).

Respectfully, the surveillance video cannot be both “highly probative” and “difficult to discern.” The video is, as the Court stated, “difficult to discern.” It is impossible to see what is happening in the video. The scene was very dark, and the camera was too far away to allow the viewer to identify anyone. The video showed an unknown number of unidentified people moving in unknown directions for unknown reasons. Accordingly, the probative value of the video was very low. While it purported to show the actual shooting, which would be highly probative, the *quality* of the video showed it was of very little probative value. Examining the probative value also explains how the video was misleading and confusing to the jury.

The state interpreted the video for the jury based on its view of the facts without any actual evidentiary support. The jury’s repeated viewing of the video did not lessen the potential for

confusion. Instead, it demonstrated that there was confusion regarding what exactly the video depicted, making it necessary for the jury to view it several times. The dark, grainy video was confusing, misleading, and posed an unreasonably high degree of unfair prejudice to Appellant. When balanced against the low probative value offered, the video should have been excluded. Accordingly, Appellant respectfully requests this Court reverse Appellant's conviction based on the trial court's erroneous admission of the surveillance video.

### **Motion for New Trial**

This Court found that the trial court recognized appellant's requested inquiry was prohibited by Rule 606(b), SCRE because the requested inquiry would have involved juror testimony about internal influences unrelated to fundamental fairness. Therefore, the trial court did not abuse its discretion when it denied appellant's motion for a new trial without a hearing.

The South Carolina Rules of Evidence provide:

Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, **except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror.** Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

Rule, 606(b) SCRE.

The inquiry suggested here was not prohibited under Rule 606(b), SCRE. The inquiry would not have caused the jurors to reveal the subject matter of their deliberations. Instead, it fell under the exception to the rule that allows inquiry of the jurors solely on external factors that

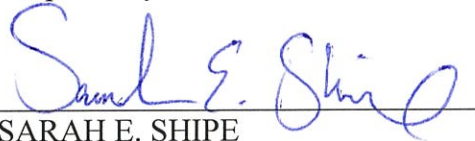
may have resulted in their feeling coerced. Specifically, Appellant requested a hearing on his motion for a new trial to permit the questioning of jurors regarding (1) the impact of the length of the deliberations on their ability to deliberate, (2) impact of the lack of nourishment on their ability to deliberate; and (3) what their understanding of whether a verdict had to be rendered was and any impact any misunderstandings may have had on the verdict.

The record reflects that the jury deliberated for over ten hours and received only one meal. After receiving the verdict, the trial judge indicated his blood sugar was low and he was fatigued. He candidly told the parties he would prefer not to go forward with sentencing that evening because he was not at the “top of his game” due to his lack of food and his lack of rest. The same was true for the jurors. The true impact of the length of the deliberations coupled with the lack of food and the imprecise instructions regarding rendering a verdict was unknown until Appellant discovered a social media post from a juror showing the juror believed it was necessary to render a verdict and it had to be rendered that day.

The above referenced social media post was the after discovered evidence which led to Appellant’s request for a new trial under Rule 29(b) of the Rules of Criminal Procedure. A motion for a new trial based on after-discovered evidence must be made within one year after the date of actual discovery of the evidence. A motion for a new trial based on after-discovered evidence must be granted if the evidence “(1) is such that it would probably change the result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence have been discovered prior to trial; (4) is material; and (5) is not merely cumulative or impeaching.” State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009)(citing State v. Spann, 334 S.C. 618, 619-620, 513 S.E.2d 98, 99 (1999)).

Had the true impact of the length of the deliberations without food and the vague instructions been known, there is a reasonable probability that it would have changed the verdict. The social media post was discovered after the trial and could not have been discovered prior to trial. The information contained within the post was not merely impeaching or cumulative to any other information available at trial and was not known at the time of trial. Considering the prima facie case Appellant respectfully requests a hearing on his motion for new trial.

Respectfully Submitted,



SARAH E. SHIPE  
Appellate Defender

SUSAN B. HACKETT  
Appellate Defender

ATTORNEYS FOR APPELLANT

This 8<sup>th</sup> day of December, 2022.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Greenwood County

Honorable Frank R. Addy, Circuit Court Judge

\_\_\_\_\_  
THE STATE,

RESPONDENT,

V.

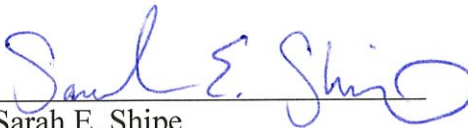
XZARIERA OKEVIS GRAY,

APPELLANT

APPELLATE CASE NO. 2019-001109

\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-entitled case has been served upon Melody Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), which is [mbrown@scag.gov](mailto:mbrown@scag.gov); and Xzariera Okevis Gray, #325069, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 8<sup>th</sup> day of December, 2022.

  
\_\_\_\_\_  
Sarah E. Shipe  
Appellate Defender

ATTORNEY FOR APPELLANT



COPY

State of South Carolina  
The Circuit Court of the Eighth Judicial Circuit

Frank R. Addy, Jr.  
Judge

December 9, 2022

Greenwood County Courthouse  
528 Monument Street, Suite 210  
Greenwood, SC 29646  
Phone: (864) 943-8020  
Fax: (864) 942-8581  
faddyj@sccourts.org

The Hon. Aphrodite K. Konduros  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

Re: State v. Xzariera Okevis Gray  
Opinion No. 5951 issued November 23, 2022

Dear Judge Konduros,

I write regarding the above opinion which was recently issued and which ordered a remand so that I could make specific factual findings with regard to Mr. Gray's stand your ground motion. I imagine that motions for reconsideration or a rehearing may have already been filed by the parties.

I have pulled my notes on this case, as well as my clerk's notes, and I have a good recollection of the testimony pertaining to Mr. Gray's motion for immunity. In an effort to promote judicial economy, I am happy to go ahead and issue a written order addressing Mr. Gray's motion if I am authorized to do so by your Court. I could then forward that order to your Court. In this way, the Court of Appeals, and potentially the Supreme Court, would be able to review my findings without the parties losing their place in the appellate line.

Candidly, I do not know if there is even a mechanism for the Court of Appeals to issue a "limited remand" as I suggest, but I thought I would make the offer if it is something which is permissible and which you or counsel wish to explore.

Sincerely,

Frank R. Addy, Jr.

Cc: Susan B. Hackett, Esq.  
The Hon. Donald J. Zelenka

STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

Appeal from Greenwood County  
Frank R. Addy, Jr., Circuit Court Judge

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THE STATE,

Respondent,

v.

XZARIERA OKEVIS GRAY,

Appellant.

Appellate Case No. 2017-002011

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**RETURN TO PETITION FOR REHEARING**

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On November 23, 2022, this Court issued its opinion in the captioned appeal. The Court affirmed in part, finding no error in the admission of the video of the shooting or in denying Gray’s post-trial motion without a hearing, but remanded for Judge Addy “to make specific findings that support [a] determination of whether Gray is, or is not, entitled to immunity under the Act.” (Op. No. 5951 at [unnumbered] p. 2). Appellant, Xzariera Okevis Gray, filed a petition for rehearing on December 9, 2022. This Court has called for a response.

In his petition, Gray argues that this Court’s determination of his trial issues may be rendered “advisory” if on remand Judge Addy should grant immunity; therefore, Gray requests this Court withdraw its opinion and reissue only as to the immunity issue. (Pet. at 1-2). He further submits, alternatively, there is error in the resolution of those issues. Respondent submits that

Gray is incorrect in his suggestion that it is somehow inappropriate to resolve all the issues Gray raised in his appeal, and further, that the Court did not err in affirming on the remaining issues. In support of this position, Respondent would respectfully show the Court:

1. As a general principle, appellate courts do not answer merely academic questions. *See, e.g., Wallace v. City of York*, 276 S.C. 693, 694, 281 S.E.2d 487, 488 (1981) (“The function of appellate courts is not to give opinions on merely abstract or theoretical matters, but only to decide actual controversies injuriously affecting the rights of some party to the litigation.”). The question of whether an issue is “real” and available for review is tied to whether a ruling has impact on the rights of the parties. Stated differently, “[a] justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute.” *Pee Dee Elec. Co-op., Inc. v. Carolina Power & Light Co.*, 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983) (citing *Orr v. Clyburn*, S.C., 290 S.E.2d 804 (1982)). A question answered that would “settle no legal rights of the parties” would result merely in an “advisory” opinion, thus would not be appropriate for an appellate court to address. *Id.*

This Court properly ruled on all the issues Gray raised in his appeal. A pre-trial immunity ruling is part and parcel of the lower court proceedings. Gray attempts a hybrid approach that does not acknowledge this fact. His error is best shown by considering the interlocutory nature of an attempted appeal on an unsuccessful immunity argument. While the State may appeal an order granting immunity, as it would essentially end the proceedings at that point, a defendant may not appeal directly from an order denying immunity. *State v. Isaac*, 405 S.C. 177, 182, 747 S.E.2d 677, 679 (2013) (“an order *denying* a request for immunity is not a final order in the case”) (emphasis in original). In other words, a defendant must bring all of his issues to the appellate court at one time.

This is what Gray has done, and this Court has properly ruled upon all the issues Gray presented.

Gray's present argument attempting to sever the rulings now depends on an artificial separation at best, and, at worst, an argument offensive to the principles set out in *Isaac*. If one finds, apart from *Isaac*'s interlocutory appeal distinction, that the remand would allow Gray to revive this appeal should immunity be denied, which he presumably would wish to do (and indicates as such, Pet. at 2), he would then return to this Court and *re-argue* his trial issues. Such a procedure would needlessly waste time and resources – both that of the Court and the parties. Gray's second-bite-at-the-apple theory essentially grants a new appeal without finding error in the first one. Further, his suggestion is premised on a *potential future* event. True, "cases or issues which have become moot or academic in nature are not a proper subject of review." *Sloan v. Greenville Cnty.*, 356 S.C. 531, 552, 590 S.E.2d 338, 349 (Ct. App. 2003) (quoting *Wallace*, 276 S.C. at 694, 281 S.E.2d at 488) (emphasis added). Avoidance of an adverse decision, though, based upon a hopeful argument that an issue "might" become moot simply lacks a sound basis in the law. There is no principled reason for the Court to follow the course Gray suggests.

2. Moreover, the only relief granted in Gray's appeal is limited to the ruling regarding immunity. In this Court's view, the record is insufficient for appellate review. This Court agreed that the record reflects that Judge Addy "ruled that Gray did not prove by a preponderance of the evidence that he was entitled to immunity," but found that the record lacked "specific findings that support that determination." (Op. at 8). Several key elements of the circuit court ruling are not in question. There is no doubt that Judge Addy utilized the proper burden, *see State v. Andrews*, 427 S.C. 178, 181, 830 S.E.2d 12, 13 (2019); and, the record revealed that Judge Addy did not find Gray's version of events credible so that he could carry his burden of proof, (R. 78-79). What this Court apparently found lacking was the specific reason why Judge Addy did not credit Gray's

version of events. This would be consistent with the treatment of the record in immunity ruling review in other cases.

For example, this Court found, without the need for remand and a written order, that a trial judge's reference to a defendant's "inability to explain" the victim's "twenty-four additional stab wounds" when the defendant related his version of events was sufficient to show and support the required fact-finding. *State v. Chhith-Berry*, 437 S.C. 527, 544, 878 S.E.2d 352, 361 (Ct. App. 2022), *reh'g denied* (Oct. 20, 2022). *Accord State v. Marshall*, 428 S.C. 11, 19–20, 832 S.E.2d 618, 623 (Ct. App. 2019) (noting "the circuit court found numerous inconsistencies called Marshall's credibility into question and resulted in Marshall failing to establish entitlement to immunity by the preponderance of the evidence"). *See also Andrews*, 427 S.C. at 182, 830 S.E.2d at 14 ("while the circuit court may not have set forth every detail of its analysis in the record, the record is nevertheless adequate for a reviewing court to determine that the circuit court applied the correct burden of proof *and made findings* that supported its denial of immunity consistent with a correct application of this Court's precedent") (emphasis added).

Here, while Judge Addy acknowledged that he did not find Gray's version of events credible, he did not cite to a discrete fact or circumstance that supported that broad finding. Essentially, though the reasoning may be logically (and the State submitted fairly) inferred by the trial judge's handling of the hearing and comments in the hearing, there were no explicit fact-findings that this Court could quote or reference. In essence, this case falls in the murky area appellate courts have struggled to navigate. To be sure, there is no requirement for a formal written order. *See State v. Cervantes-Pavon*, 426 S.C. 442, 452 n. 4, 827 S.E.2d 564, 569 n. 4 (2019). Yet, regarding oral rulings, our Supreme Court has cautioned that the trial court "should *at least* make specific findings on the elements" of self-defense. *State v. Glenn*, 429 S.C. 108, 123,

838 S.E.2d 491, 499 (2019) (emphasis added). Consequently, it presently falls to the appellate court reviewing the ruling as to whether the record is sufficient for appellate review. Here, the Court found that the record was not sufficient and remanded for specific fact-findings to ensure that the trial judge's role as fact-finder was actually and properly performed.

In these discrete circumstances, the State has not challenged this decision in its own petition for rehearing given the limited relief granted. Though it fairly relied upon reasonable inferences (as compared to explicit references, for example, in *Chhith-Berry* noted above), and the recognition of the correct legal principles expressly set out in the ruling, *Andrews, supra*, nevertheless, it has resolved in this instance that to allow Judge Addy to announce his findings explicitly may bring closure to this issue in the most efficient manner.<sup>1</sup> Indeed, Judge Addy's subsequent letter to this Court, dated December 9, 2022, underscores that he stands willing to place those findings that he previously made and recalls on the record by written order. (Attachment 1). Respondent agrees with Judge Addy that this will allow this Court to more fully review the ruling on appeal without causing undue delay.

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<sup>1</sup> The Court did not find Gray was denied an opportunity to present evidence, or the process of the pre-trial hearing was somehow infirm such that a new hearing is warranted; rather, the finding of error is distinctly narrowed only to the trial judge's ruling. In contrast, in *Glenn*, our Supreme Court found "reversible legal error" in the structure of the circuit court's ruling and ordered a new hearing. 429 S.C. at 120, 838 S.E.2d at 499. Likewise, in *Cervantes-Pavon*, our Supreme Court found that the trial judge's findings did not warrant denial of immunity, and specifically ordered a new hearing. 426 S.C. at 452, 827 S.E.2d at 569. No such direction for a new hearing is included in this Court's opinion. Quite the opposite. This Court resolved: "we remand for the trial court to make specific findings that support its determination of whether Gray is, or is not, entitled to immunity under the Act." (Op. at 9). *Accord State v. McCarty*, 437 S.C. 355, 374, 878 S.E.2d 902, 913 (2022) (resolving "there are no specific findings by the circuit court to enable th[e] Court to adequately undertake its appellate review" but recognizing either a written order or additional testimony as sufficient methods to remedy error). Consequently, the evidence is closed and only the ruling remains open at this time. Gray has not asked the Court to reconsider its ruling in this regard and the matter of whether a new hearing should be held is similarly closed.

3. In light of the foregoing, Respondent offers this suggested resolution: this Court should withdraw the opinion and order a limited remand for entry of the written order as offered by Judge Addy. Respondent suggests a 60 day time frame in which to supplement the record with the order. At that time, the Court may invite supplemental briefing only on the immunity issue, the remaining issues having already been fully briefed and fairly decided.<sup>2</sup>

4. As to Gray's remaining challenges to the Court's resolution of his two other issues, Gray points to no specific error in law or fact by this Court. Rather, he merely disagrees with the ruling. Gray has failed to show cause for this Court to revisit its resolution of the claims. See Rule 221 (a), SCACR ("petition for rehearing ... shall state with particularity the points supposed to have been overlooked or misapprehended by the court"). Moreover, the record and controlling law fully support the Court's disposition of the issues.

As to the video, this Court correctly noted the personal knowledge that Vacquec had as to his own security system, including the position of the camera that faced the street where the shooting occurred. (Op. at 9). While Gray disagrees that should be enough, that is no basis to show an abuse of discretion in Judge's Addy's ruling on authentication. There is no error of law in the ruling. As this Court found, "[a] witness with knowledge may authenticate evidence by testifying that 'a matter is what it claimed to be.'" (Op. at 9, quoting Rule 901(b)(1), SCRE). Further, Gray's argument as to Rule 403, SCRE was equally unavailable where "the surveillance video clearly contradicted some of Gray's testimony." (Op. at 10). Again, Gray could not show an abuse of discretion in admitting this probative evidence simply because he submits the video

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<sup>2</sup> Further, withdrawal of the opinion and ordering this suggested, limited remand procedure would avoid the unwarranted repetition of appellate arguments that would result if the Court embraced Gray's request to set aside the rulings on his other appellate issues.

was not of the best quality or reflective of the sharpest of images. The Court did not misapprehend either the relevant law or any fact at issue. There is no apparent error in the Court's disposition. The issue does not support relief.

As to the post-trial motion issue, again, Gray again simply failed to show an abuse of discretion. Indeed, it would have been error to allow the jurors to be questioned about their deliberations. (Op. at 11, citing Rule 606(b), SCRE). Gray contends that he could properly question the jurors on the circumstances of deliberations and "any misunderstandings" of the law as provided through the trial judge's instructions, (Pet. at 7-8), but he has yet to reach the narrow area in which courts have allowed the inquiry: allegations of "extraneous prejudicial information," intimidation, or premature deliberations. (Op. at 11). See *State v. Hunter*, 320 S.C. 85, 463 S.E.2d 314 (1995) (noting racial prejudice exception); *State v. Aldret*, 333 S.C. 307, 509 S.E.2d 811 (1999) (noting premature jury deliberations exception). Allegations of general "misunderstandings" of the law are not enough. *State v. Pittman*, 373 S.C. 527, 555, 647 S.E.2d 144, 158 (2007) ("a jury's misapprehension of the law is not enough to impeach a verdict"). Gray, again, cannot show an abuse of discretion based on an error of law. The Court did not misapprehend either the relevant law or any fact at issue. The issue does not support relief. There is no apparent error in the Court's disposition. The issue does not support relief.

### CONCLUSION

For all the above reasons, Respondent submits that this Court should withdraw the opinion, but, contrary to Gray's request, should order a limited remand for the trial judge to issue an order in accordance with this Court's directions.

Respectfully submitted,

ALAN WILSON  
Attorney General

DONALD J. ZELENKA  
Deputy Attorney General

MELODY J. BROWN  
Senior Assistant Deputy Attorney General

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
(803) 734-6305

*s/Melody J. Brown*

BY: \_\_\_\_\_  
MELODY J. BROWN  
S.C. Bar 14244

December 19, 2022  
Columbia, South Carolina.

ATTORNEYS FOR RESPONDENT

RECEIVED

Dec 19 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA  
In the Court of Appeals

Appeal from Greenwood County  
Frank R. Addy, Jr., Circuit Court Judge

THE STATE,

Respondent,

v.

XZARIERA OKEVIS GRAY,

Appellant.

Appellate Case No. 2017-002011

**CERTIFICATE OF SERVICE**

I, Angela Brown, am an employee of the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Return to Petition for Rehearing, and Certificate of Service has been forwarded to Appellant’s counsel, Susan B. Hackett, Esquire and Sarah E. Shipe, Esquire via email today, December 19, 2022 to [shackett@sccid.sc.gov](mailto:shackett@sccid.sc.gov) and [sshipe@sccid.sc.gov](mailto:sshipe@sccid.sc.gov), and to their assistants Scott Leverett and Chris Stock, at [sleverett@sccid.sc.gov](mailto:sleverett@sccid.sc.gov) and [cstock@sccid.sc.gov](mailto:cstock@sccid.sc.gov).

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

This 19<sup>th</sup> day of December, 2022.

*s/ Angela Brown*

Angela Brown  
Legal Assistant to Melody J. Brown  
Senior Assistant Deputy Attorney General

# The South Carolina Court of Appeals

The State, Respondent,

v.

Xzariera Okevis Gray, Appellant.

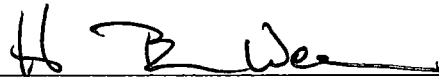
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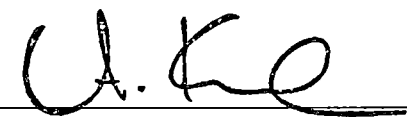
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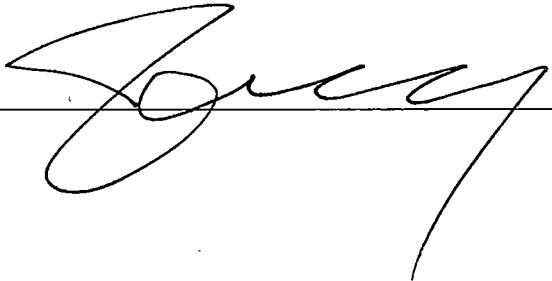
## ORDER

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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.

  
\_\_\_\_\_ C.J.

  
\_\_\_\_\_ J.

  
\_\_\_\_\_ J.

Columbia, South Carolina

cc:

- Alan McCrory Wilson, Esquire
- Melody Jane Brown, Esquire
- Susan Barber Hackett, Esquire
- Donald J. Zelenka, Esquire

Sarah Elizabeth Shipe, Esquire  
The Honorable Frank R. Addy, Jr.

**FILED**  
**Jan 23 2023**