



2023 MAY 1 - 4 PM 12:11
JERRI ANN ROSENEAU
CLERK OF COURT
BEAUFORT COUNTY, S.C.

ALAN WILSON
ATTORNEY GENERAL

May 1, 2023

The Honorable Isaac McDuffie Stone
Solicitor, Fourteenth Judicial Circuit
P. O. Box 1880
Bluffton, South Carolina 29910

RECEIVED

MAY 08 2023

SC Court of Appeals

Re: The State v. Dale E. King
Appeal from Beaufort County
Lower Court Case No. 2017GS0700810
South Carolina Court of Appeals' Appellate Case No. 2019-002078

Dear Solicitor Stone:

On April 28, 2023, the South Carolina Court of Appeals issued an **Order recalling the Remittitur** in the above captioned case. Therefore, this case will be re-opened. Please note this status in your records. Thank you.

Enclosed please find a copy of the Order recalling the Remittitur.

If you should have any questions, please contact me.

Sincerely,

Julianna E. Battenfield
Assistant Attorney General

JEBbbr

Enclosures

cc: Barton J. Vincent, Esq., General Counsel, South Carolina Department of Corrections (w/copy of encls.)

The Honorable Jerri Ann Roseneau, Clerk of Court, Beaufort County (w/copies of encls.)

Trisha Allen, Victims Advocacy Division (w/copies of encls.)

The South Carolina Court of Appeals

The State, Respondent,

v.

Dale Eugene King, Appellant.

Appellate Case No. 2019-002078

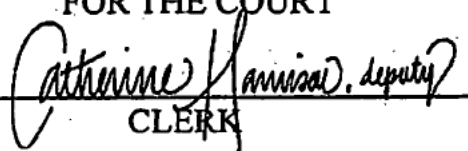
The Honorable Edgar W. Dickson
Beaufort County
Trial Court Case No. 2017GS0700810

ORDER

This Court's remittitur was sent to the Clerk of Aiken County on March 31, 2023. It is now necessary for this Court to recall the remittitur. The Clerk of Beaufort County is, therefore, directed to return the remittitur to the Clerk of the South Carolina Court of Appeals within ten (10) days from the date of this order.

FOR THE COURT

BY


CLERK

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire

Wanda H. Carter, Esquire

Melody Jane Brown, Esquire

Julianna E. Battenfield, Esquire

Donald J. Zelenka, Esquire

Isaac McDuffie Stone, III, Esquire
The Honorable Jerri Ann Roseneau

FILED
Apr 28 2023



2023 APR 19 AM 11:52

DATE CANCELLED
JERRY ROSENEAU
BEAUFORT CLERK OF COURT

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

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March 31, 2023

The Honorable Jerri Ann Roseneau
PO Box 1128
Beaufort SC 29901-1128

REMITTITUR

Re: The State v. Dale E. King
Lower Court Case No. 2017GS0700810
Appellate Case No. 2019-002078

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

Handwritten signature of V. Claire Allen in cursive.

CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
Adam Sinclair Ruffin, Esquire
Melody Jane Brown, Esquire
Julianna E. Battenfield, Esquire
Donald J. Zelenka, Esquire
Isaac McDuffie Stone, III, Esquire

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

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

The State, Respondent,

v.

Dale Eugene King, Appellant.

Appellate Case No. 2019-002078

Appeal From Beaufort County
Edgar W. Dickson, Circuit Court Judge

Unpublished Opinion No. 2023-UP-091
Submitted February 1, 2023 – Filed March 15, 2023

AFFIRMED

Appellate Defender Adam Sinclair Ruffin, of North
Charleston, for Appellant.

Attorney General Alan McCrory, Deputy Attorney
General Donald J. Zelenka, Senior Assistant Deputy
Attorney General Melody Jane Brown, and Assistant
Attorney General Julianna E. Battenfield, all of
Columbia; and Solicitor Isaac McDuffie Stone, III, of
Bluffton, all for Respondent.

PER CURIAM: Dale Eugene King appeals his conviction for murder and sentence of thirty-five years' imprisonment. On appeal King argues the trial court erred in (1) failing to grant a mistrial after the trial court instructed the jury that a trial is a "search for the truth" in its opening remarks; (2) failing to grant a mistrial after Decedent's sister testified of a prior episode of domestic violence allegedly committed by King against Decedent; and (3) admitting the testimony of King's daughter and the arresting officer of a physical assault King allegedly committed against Decedent two months prior to Decedent's death. We affirm.

1. We hold the trial court did not abuse its discretion by refusing to grant a mistrial after it instructed the jury that a trial is a "search for the truth." *See State v. Harris*, 382 S.C. 107, 117, 674 S.E.2d 532, 537 (Ct. App. 2009) ("The trial court's decision will not be overturned on appeal absent an abuse of discretion amounting to an error of law."). The trial court's "search for the truth" remarks came at the beginning of trial; the trial court did not give the jury any charges on the law or reasonable doubt at the time the remarks were made; the trial court, the State, and King devoted time in each of their opening remarks to explain the State's burden of proof and reasonable doubt; and the trial court properly instructed the jury on the law during its instructions immediately before deliberations. *See State v. Beaty*, 423 S.C. 26, 34, 813 S.E.2d 502, 506 (2018) (holding the trial court's search for the truth comment during its opening remarks not to be reversible error where it was a "mere statement to the jury and not a charge on the law. . . . [and] the remarks were not linked to either the reasonable doubt or circumstantial evidence charges"); *State v. Patterson*, 425 S.C. 500, 512, 823 S.E.2d 217, 224 (Ct. App. 2019) (holding the trial court's search for the truth remark was not reversible error because the "comments came at the beginning of trial rather than the charge on the State's burden of proof at the end"); *id.* at 512, 823 S.E.2d at 224 ("Furthermore, . . . we note the trial court gave an accurate definition of reasonable doubt later during its opening statement and again in the jury charge."). Additionally, King's guilt was conclusively proven by King's own statements and the autopsy report presented by the State. *See State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) ("When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result.").

2. We hold the trial court did not abuse its discretion by refusing to grant a mistrial after Decedent's sister testified King had committed a previous incident of domestic abuse. *See Harris*, 382 S.C. at 117, 674 S.E.2d at 537 ("The trial court's decision will not be overturned on appeal absent an abuse of discretion amounting to an error of law."). Following the sister's statement and King's objection, the trial

court immediately instructed the jury to disregard the statement. *See State v. Smith*, 290 S.C. 393, 395, 350 S.E.2d 923, 924 (1986) ("The jury should be specifically instructed to disregard [incompetent] evidence, and not to consider it for any purpose during deliberations."); *State v. Young*, 420 S.C. 608, 623, 803 S.E.2d 888, 896 (Ct. App. 2017) ("We start by presuming the cure worked, for we also presume juries follow their instructions."); *id.* at 624, 803 S.E.2d at 896 ("Limiting instructions are deemed to cure error unless 'it is probable that, notwithstanding the instruction, the accused was prejudiced.'" (quoting *Smith*, 290 S.C. at 395, 350 S.E.2d at 924)). Additionally, King's own statements and the autopsy report presented by the State conclusively proved King's guilt. *See Bailey*, 298 S.C. at 5, 377 S.E.2d at 584 ("When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result.").

3. We hold King's argument that the trial court erred by admitting testimony about alleged prior difficulties between Decedent and King is not preserved for appeal because King failed to contemporaneously renew his objection to the testimony at trial. *See State v. Johnson*, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005) ("To preserve an issue for review there must be a contemporaneous objection that is ruled upon by the trial court."); *State v. Smith*, 337 S.C. 27, 32, 522 S.E.2d 598, 600 (1999) ("A pretrial ruling on the admissibility of evidence is preliminary and is subject to change based on developments at trial."); *State v. Mueller*, 319 S.C. 266, 268, 460 S.E.2d 409, 410 (Ct. App. 1995) ("Because the evidence developed during trial may warrant a change in the ruling, the losing party must renew his objection at trial when the evidence is presented in order to preserve the issue for appeal.").

AFFIRMED.¹

WILLIAMS, C.J., GEATHERS, J., and HILL, A.J., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



JERRI ANN ROSENEAU
CLERK OF COURT
P.O. Drawer 1128
Beaufort, South Carolina 29901



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SC Court of Appeals

South Carolina Court of Appeals
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Columbia, SC 29211

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