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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
The Honorable Frank R. Addy, Circuit Court Judge

Appellate Case No. 2022-001441

THE STATE, Respondent,

v.

DASHAWN CHAZZ HURLEY, Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. The trial did not deny Hurley's motion for the State to produce a written copy of an internal police department document documenting Greenwood County gang members; the court withheld its ruling and the issue became moot. Regardless, Hurley was not prejudiced because the pertinent sections of the book were disclosed and no gang evidence was introduced at trial.

II. The trial court refused to suppress evidence discovered within two weeks of trial and immediately disclosed to the defense, and Hurley was not prejudiced because the evidence was found on the defendants' own social media pages.

III. The trial court correctly admitted relevant gunshot residue evidence.

IV. The trial court correctly refused to declare a mistrial based on a question to which the court sustained an objection and which was not prejudicial to Hurley.

V. The trial court correctly charged the law pertaining to circumstantial evidence.

VI. The trial court correctly refused to direct a verdict.

VII. Hurley failed to demonstrate error, much less cumulative error.

VIII. The trial court properly considered Hurley's gang affiliation in sentencing.

STATEMENT OF THE CASE

In April 2022, a Greenwood County grand jury indicted Appellant Dashawn Hurley for attempted murder, murder, and criminal conspiracy. Hurley proceeded to jury trial before the Honorable Frank R. Addy on August 15–24, 2022. Narkevious Reid and Xavion Hill were tried along with Hurley as co-defendants. Hurley was convicted of attempted murder and conspiracy but acquitted of murder and sentenced to 10 years' incarceration for attempted murder and five years for conspiracy, with the sentences to be served concurrently. This direct appeal follows.

STATEMENT OF FACTS

On April 8, 2020, Gabriel Goode and Justin Parks were sitting on Goode's porch smoking when they were both shot by unknown assailants. The State alleged Appellant Dashawn Hurley was one of a group of four individuals who carried out the shooting, and that Hurley drove the other three to the scene. One of Hurley's group, Trivoriaye Alston, was accidentally shot and killed by Hill during the episode. The State alleged Hill also accidentally shot himself. The State theorized Hill, Hurley, and Reid were seeking revenge for the murder of their friend, Jakevius Parker. Parker had been murdered the previous month by one of Parks and Goode's friends, Ji'Tavius Adams. (R.173). The State theorized the shooting was gang-related, but the trial court excluded all evidence of gang affiliation after a pretrial hearing.

Parks and Goode were at Goode's apartment at Hillcrest Apartments smoking on the porch. (R.473-474). Someone started shooting from nearby bush. (R.477). Goode saw a muzzle flash and someone in a black ski mask. (R.477-478). Goode was hit in the foot and Parks was hit in the hand and leg. Neither Goode nor Parks was able to identify the shooters. (R.492, 496). Neither Goode nor Parker returned fire. (R.478). Police found a handgun in Goode's apartment but it was cold to the touch and did not smell like it had been recently fired. (R.449). Goode and Parks both testified they knew and would hang out with Ji'Tavius Adams. (R.485, 498).

Jameel Wilson was a handyman at the Cardinal Glen Apartments, which is across the road from Hillcrest Apartments. (R.377, 382–83). After lunchtime, he saw a black Camry riding around Cardinal Glen "a couple times." (R.381). There were several people in the car and "it looked like they were looking for something." (R.381). The car had tinted windows, but he could tell the two back seat passengers had "twists" in their hair. (R.384–85). The second time

the Camry rode through, it paused in the back side of the complex and then sped away onto the main road. (R.382). Shortly after, he heard shots coming from Hillcrest Apartments. (R.383).

Stephanie Moss was in her first-floor apartment at the Gardens at Parkway apartment complex, next door to Hillcrest Apartments. (R.395–96). She saw a black car—which she at first thought was her cousin's Camry—pull up outside and "about three" boys got out. (R.397, 407). During cross-examination, Moss said she only saw one person "specifically," but there were multiple people in the car. (R.403, 408). He had on a white shirt with blue anchors. Hillcrest Apartments is accessible from her apartment complex by a path through some trees. (R.398, 431). She heard gunshots and went into her bedroom with her son. Five minutes later she went outside and saw a gun laying in the parking lot. (R.399).

Laurel Bollinger lived at Hillcrest Apartments. (R.411). She was in her apartment with her family when she heard what she thought were fireworks. (R.414). She looked outside and saw two people crouched behind a large bush. (R.414). One had on a white shirt and the other had on a dark shirt. She then saw someone else run by with a handgun. (R.414–15). He "didn't seem like a big guy." (R.415). He was not wearing a shirt and had hair that was shaved around the sides but with "baby dreads" on top. (R.415, 421). They were all African-American. (R.418–19). Alston did in fact have "twists" in his hair that day. (R.603).

Paul Hawthorne worked at the Gardens at Parkway. (R.425). He was outside smoking a cigarette when he heard what he thought were fireworks. He got into his car and rode in that direction. He encountered Hill "hopping and waving." (R.426, 430). Hill said he had been shot and asked Hawthorne to take him to the hospital. Hill had "blood on his backside" and was bleeding profusely. (R.428). Hawthorne saw a black car leaving the apartment complex. (R.428). The back passenger side door was open and there were feet hanging out. (R.429).

Hawthorne called 911 and took Hill to the hospital. Hill told police he had been riding in a Honda with a friend named Breezy and he did not know how he had been shot. (R.608).

Almost contemporaneously, Hurley and Reid dropped off Alston at the hospital. Hospital surveillance video showed Hurley and Reid in the black Camry dropping Alston's body at the hospital entrance, where he was pronounced dead shortly after. (State's Exhibit #96; R.552–53, 574, 697–98). About a minute later, the video shows Hawthorne dropping off Hill. (R.554–55). Police put out a BOLO for the Camry and an officer identified the driver as Hurley and stated the car belonged to Hurley's mother. (R.558). Police later performed a traffic stop on the car and found Hurley's sister driving, but Hurley was not in the car. (R.558, 700, 1050). The vehicle was impounded and searched three days later. Hurley and Hurley were not taken into custody until July. (R.560).

A gun found at the woodline separating Hillcrest Apartments from the Gardens at Parkway Apartments was a Taurus second generation 9mm. The gun recovered from the parking lot by Moss's apartment was a Taurus third generation 9mm. (R.719). Police recovered 13 shell casings. (R.713). All of the casings were 9mm. (R.765). Six casings matched the gun recovered from the woodline and seven matched the gun recovered from the parking lot. (R.767). No .40 caliber casings were recovered, the caliber of the pistol located in Goode's apartment. (R.767–68).

The DNA profiles from both handguns were mixtures. (R.787). Alston's DNA and a mixture of three other individuals' DNA was on the pistol recovered from the parking lot. (R.789). Reid and Hurley were excluded as contributors. (R.790). Hill could not be excluded, but it was unlikely that his DNA was on the gun. (R.791–94). DNA swabs from the pistol located at the woodline were not suitable for comparison. (R.795).

Hurley and Reid both testified and denied any involvement in the shooting. They claimed Hurley went to pick up Reid from nearby Cardinal Glen Apartments and they saw Alston running down the road with a gunshot wound. They claimed they merely drove Alston to the hospital, and their presence at the scene at the time of the shooting was mere coincidence. (R.1002-1066).

ARGUMENT

I. The trial court did not deny Hurley's motion for the State to produce a written copy of an internal police department document documenting Greenwood County gang members; the court withheld its ruling and the issue became moot. Regardless, Hurley was not prejudiced because the pertinent sections of the book were disclosed and no gang evidence was introduced at trial.

Hurley argues the trial court erred by "failing to require the State to produce a copy of the Greenwood Police Department 'Gang Book' . . . ." The "gang book" was an internal document produced by Greenwood police documenting confirmed gang members in Greenwood. Contrary to Hurley's argument, the State did produce the pertinent sections of the "gang book" for counsel's inspection. Furthermore, Hurly was not prejudiced because evidence of gang affiliation was not admitted at trial and the written copy of the gang book would not have had any significant effect on Hurley's defense. This Court should affirm.

Standard of review.

In criminal cases, the appellate court reviews errors of law only. State v. Vinson, 400 S.C. 347, 351, 734 S.E.2d 182, 184 (Ct. App. 2012).

Discussion.

Hurley mischaracterizes what occurred at the pretrial hearing. The point of the hearing, as the trial court stated several times, was to determine whether Investigator Blackwell would be qualified as an expert in gang investigations and whether the State would be allowed to introduce evidence that Hurley, Hill, and Reid were members of a gang. (R.105–110, 119, 126–127, 205–6). After a lengthy hearing, the court excluded evidence that Hurley, Hill, and Reid were in a gang. (R.302–305). Numerous exhibits were marked during the hearing, including photographs from social media and various lists Investigator Blackwell complied documenting the co-defendants as gang members. Court's Exhibits # 1–15. Regarding the "gang book," Blackwell testified as follows: "The Greenwood Police Department gang book is a book that I put together

to give to law enforcement letting them have knowledge of the members we have here in Greenwood. Details, like, the criteria needed to place somebody in Gang Net. Gang Net is the database where we put gang members and, so it's just kind of a . . . officers around the state can have an idea of who's in gangs and who they are affiliated with. I did that in 2020." (R.117). The solicitor's office produced digital copies of the portions of the "gang book" pertaining to the co-defendants the week before trial. (R.132–33). Defense counsel for Hurley insisted he wanted the "paper" copy of the gang book "since that's something that they are relying on as to his qualifications." (R.132–33). Defense counsel explained he wanted to see "how they identified Dashawn Hurley as a member of a gang." (R.135, lines 8–9). The trial court responded that it seems the issue was "part and parcel with the question of factually how does he go about including somebody in that list or concluding that someone is affiliated with one of these three gangs . . . ." (R.135–136).

The court did not deny Hurley's motion to require the State to produce a paper copy of the book. The court suggested he "put a pin in the question of qualification as an expert and allow the State to go ahead and proffer testimony concerning how these defendants were included, or how someone came to conclude that they were involved in a gang. . . . And perhaps the gang book may become relevant at some future point in time, but let's go ahead and develop his testimony a little bit more before I decide whether or not." (R.136). In response to the court's explanation that he wanted to hear the rest of the testimony, defense counsel stated: "I understand that, and I would just ask that the government have that available for your review should you deem to be necessary without us having to engage in any delay." (R.138).

At the conclusion of the hearing, the trial court excluded evidence that Hurley was in a gang. Defense counsel did not renew his request that the State produce the "paper" copy of the

book. Accordingly, there is no adverse ruling for this Court to review. See State v. Lopez, 352 S.C. 373, 378, 574 S.E.2d 210, 213 (Ct. App. 2002) ("An issue must be raised to and ruled upon by the circuit court in order to be considered on appeal."). Hurley acquiesced in the court's decision to hear the remainder of the testimony before requiring the State to produce the paper copy of the book, and did not renew his request after the court announced its ruling excluding gang evidence. State v. Wright, 416 S.C. 353, 371, 785 S.E.2d 479, 488 (Ct. App. 2016) ("A party may not acquiesce in a ruling and then complain on appeal."). This issue is not preserved for review.

Regardless, Hurley was not prejudiced. The portions of the book pertinent to Hurley and his co-defendants were handed over to the defense. Hurley fails to explain how the remainder of the book had any relevance to his trial where no gang evidence was admitted. "The Brady disclosure rule is grounded in the defendant's fundamental right to a fair trial mandated by the Due Process Clause of the Fifth and Fourteenth Amendments. It requires the prosecution to disclose evidence that is: 1.) in its possession; 2.) favorable to the accused; and 3.) material to guilt or punishment." State v. Kennerly, 331 S.C. 442, 452, 503 S.E.2d 214, 219–20 (Ct. App. 1998). "[E]vidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." Id. There is not a reasonable probability the remainder of the gang book would have "put the whole case in such a different light as to undermine confidence in the verdict." Cone v. Bell, 556 U.S. 449, 469–70 (2009); State v. Proctor, 358 S.C. 424, 431, 595 S.E.2d 480, 483 (2004) (holding "to the extent that respondent sought the proficiency test results in order to calculate the 'lab error rate' and then use that rate to discount the probability match, he cannot demonstrate

prejudice from the denial of that information since no 'match' evidence was presented to the jury.").

Hurley claims the trial court relied on the undisclosed portion of the gang book at sentencing. This assertion is not supported by the record. The trial court never saw the "paper" copy of the gang book, and thus could not have relied on it. The only evidence the court heard regarding gang involvement came at the pretrial hearing where the paper copy of the gang book was not entered. The court acted within its discretion by taking the evidence presented at the pretrial hearing into consideration at sentencing. This Court should affirm.

II. The trial court refused to suppress evidence discovered within two weeks of trial and immediately disclosed to the defense, and Hurley was not prejudiced because the evidence was found on the defendants' own social media pages.

Hurley argues the trial court erred by failing to exclude evidence disclosed eleven days prior to trial. Hurley does not specifically identify any evidence in his brief in support of this argument, so this issue is not preserved for review. Even if preserved, the trial court correctly admitted all evidence disclosed to the defense before trial because the defense had a fair opportunity to review the evidence and was not taken by surprise. This Court should affirm.

Standard of review.

The admission or exclusion of evidence is also subject to an abuse of discretion standard of review. State v. Douglas, 411 S.C. 307, 316, 768 S.E.2d 232, 237 (Ct. App. 2014).

Discussion.

Hurley's brief contains no citations to the record and does not identify any specific piece of evidence he alleges the trial court erroneously admitted. The State and this Court should not have to guess where within this 1200-page transcript Hurley made this motion, and which of the 140+ exhibits he alleges should have been excluded. The issue is not preserved for review. See Rule 208(b)(4), SCACR ("The brief shall contain references to the transcript, pleadings, orders,

exhibits, or other materials which may be properly included in the Record on Appeal . . . to support the salient facts alleged. References shall also be made to where relevant objections and rulings occurred in the transcript."); Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992) ("Counsel is advised that the South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State.").

Even if this Court excuses Hurley's failure to provide any record cites to support his assertions, his argument is meritless. The evidence regarding the co-defendants' prior relationships and potential motive was disclosed in plenty of time for the defense to prepare for its use at trial. Evidence is not considered "material" if the defense discovers the information in time to adequately use it at trial. State v. Moses, 390 S.C. 502, 517, 702 S.E.2d 395, 403 (Ct. App. 2010). Furthermore, all of the social media evidence (assuming this is the basis for Hurley's argument) was taken from the defendants' own social media pages. There was no surprise.

To the extent Hurley claims he was prejudiced by late disclosure of the "gang book," this argument fails for the same reasons discussed above. The gang book was not introduced as evidence, as the trial court excluded all reference to gangs. Furthermore, law enforcement suspicion of gang activity was no surprise. The State stated at a bond hearing that they believed the shooting was gang related. (R.646). It was also in the incident report. (R.647). Hurley has failed to show prejudice from the alleged tardy disclosure of motive evidence. This Court should affirm.

III. The trial court correctly admitted relevant gunshot residue evidence.

Hurley claims the trial court erred by admitting gunshot residue evidence (GSR). He has not shown an abuse of discretion. The evidence was plainly relevant and reliable. It was for the

jury, not the trial court, to determine the weight to be given to the evidence. This Court should affirm.

Standard of review.

The admission or exclusion of evidence is also subject to an abuse of discretion standard of review. State v. Douglas, 411 S.C. 307, 316, 768 S.E.2d 232, 237 (Ct. App. 2014).

Discussion.

The State admitted evidence that gunshot residue was recovered from the hands of Hill and Alston, but not from the victims. This evidence tended to show Hill and Alston fired guns, but the victims did not. In refusing to exclude the evidence, the trial court correctly held this evidence was relevant and the issue was "ripe for cross-examination." (R.810).

The GSR evidence was reliable. GSR evidence is straightforward and commonplace and, as the trial court noted, there can be no serious contention that it's not based on reliable science. (R.810, 815). Hurley argued that even if GSR is reliable generally, the testimony in this case was not reliable and not helpful to the jury because it did not prove Hill or Alston fired a gun.

The expert candidly admitted she could not opine whether Hill or Alston actually fired a gun. (R.808). Even though GSR could not prove Hill and Alston fired guns, it was consistent with them having done so. Furthermore, the presence of GSR on Alston and Hill's hands refutes any inference that they were shot by Parks or Goode—rather than themselves—because the gunfire happened at a distance. (R.807). Finally, Parks and Goode did not have GSR on their hands. While GSR is easily removable, it is less likely Parks and Goode had the wherewithal to wash it off themselves when they had both just been shot. Goode had a shattered femur and was not mobile. (R.499). Thus the GSR evidence was relevant and helpful to the jury's

understanding of the case. See Rule 402, SCRE (explaining evidence is relevant if it has "any tendency" to prove a fact in controversy).

Regardless, Hurley was not prejudiced. First of all, GSR evidence was not offered against Hurley. Because he fled the scene, police were not able to collect a sample from him. Second, the expert clearly explained the limitations of the GSR evidence. (R.817–18). All three defense attorneys thoroughly cross-examined the expert. The jury was well aware the GSR evidence did not definitively prove Alston and Hill fired guns, even though this fact was obvious from the testimony as a whole. The GSR evidence did not have an outcome on the case. This Court should affirm.

IV. The trial court correctly refused to declare a mistrial based on a question to which the court sustained an objection and which was not prejudicial to Hurley.

Hurley claims the trial court erred by refusing to grant a mistrial based on a question asked by the solicitor, whether the investigator was concerned about "retaliation" after Hurley's co-defendant Hill made a threatening Facebook post. Hurley fails to show prejudice. Even though the question was arguably within the bounds of the trial court's preliminary ruling, the trial court sustained an objection to the question and instructed the jury to disregard it. Thus the jury heard no improper testimony. This Court should affirm.

Standard of review.

A trial court's denial of a mistrial is reviewed for abuse of discretion. State v. Bantan, 387 S.C. 412, 417, 692 S.E.2d 201, 203 (Ct. App. 2010).

Discussion.

"The granting of a motion for mistrial is an extreme measure that should be taken only when the incident is so grievous the prejudicial effect can be removed in no other way. A mistrial should be granted only when absolutely necessary and a defendant must show both error and

resulting prejudice to be entitled to a mistrial. A mistrial should only be granted in cases of manifest necessity and with the greatest caution for very plain and obvious reasons. Whether a mistrial is manifestly necessary is a fact specific inquiry. It is not a mechanically applied standard, but rather is a determination that must be made in the context of the specific difficulty facing the trial judge. The trial court should exhaust other methods to cure possible prejudice before aborting a trial." Bantan, 387 S.C. at 417, 692 S.E.2d at 203–04 (internal citations and quotation marks omitted).

After successfully moving to exclude all reference to "gangs," the defendants attempted to expand on this favorable ruling by moving to exclude any law enforcement reference to retaliation, even though this was the State's theory of motive. The State laid the foundation for its theory of the case by admitting Facebook photos showing the defendants socializing with Jakevius Parker and testimony from Parks and Goode showing they were friends with Ji'Tavius Adams. The State argued Adams' murder of Parker was the defendants' motive for trying to kill the victims.

The photos were admitted through Investigator Blackwell. He identified several photographs and explained he used Facebook to investigate crimes. (R.632). When the solicitor moved to introduce the Facebook photos, counsel for Reid objected. (R.634). The solicitor explained he was introducing the photos to show the connection between the various individuals, but that "there's other pictures that we're not putting in that involve these guys where they're flashing guns or smoking weed. We're not putting those in, Judge, for obvious reasons. So, this shows the associations without the other highly inflammatory stuff." (R.641–42). The State also did not seek to introduce a picture of Reid by himself wearing a "Contraband Gang" sweatshirt. (R.642–43).

Reid argued any comment by the investigator about the meaning of State's Exhibit #117, the post where Hill made seemingly threatening comments regarding Parker's murder, would be improper because "he's not an expert in linguistics." (R.668). The trial court stated that while he excluded evidence the defendants were in a gang, he "made clear that the State would be allowed to introduce evidence of the affiliation of Alston with the three defendants and Mr. Parker, as well as Parks and Goode being associated, were friends with Adams." (R.637).

Hurley argued the State was "intending to present . . . improper opinion testimony. It would be improper bolstering of their own case." (R.677). In particular, Hurley moved to exclude reference to a "BOLO" ("be on the lookout") police issued after Hill's threatening Facebook post. The trial court ruled the officer could not testify he put out a BOLO based on the post because the officer's belief as to the post's intent was not probative of the underlying fact. (R.683). It is clear from the trial court's ruling that the exclusion of the officer's "interpretation" of the Facebook post was premised on Hurley's trial objection that such testimony would be improper opinion evidence.

Hurley attempts to expand the issue on appeal, claiming the trial court excluded the "content" of the post altogether, and claiming the mere mention of the word "retaliation" violated the court's ruling. Brief of Appellant at 17. At trial, Hurley objected to the State referring to the shooting as "retaliation." (R.675). The trial court responded: "I'm not trying to Casper Milktoast [sic] this proceeding."[1] (R.675). On appeal, Hurley apparently asserts this

[1] Caspar Milquetoast is an archetypically timid cartoon character, so much so that his name "came into general usage in American English to mean 'weak and ineffectual.' When the term is used to describe a person, it typically indicates someone of an unusually meek, bland, soft, or submissive nature, who is easily overlooked, written off, and who may also appear overly sensitive, timid, indecisive or cowardly." Wikipedia, "Caspar Milquetoast," https://en.wikipedia.org/wiki/Caspar_Milquetoast, last accessed February 12, 2024.

constituted a ruling that no witness could use the word "retaliation" in their testimony. Common sense tells us the court meant the opposite. By invoking Caspar Milquetoast, the trial court was indicating he would not prevent witnesses from using the word "retaliation" because this would be an unduly sensitive and timid way to conduct a trial.

Hurley mischaracterizes the trial court's ruling by asserting the court ruled the State could not offer evidence "about the content of the social media post . . . ." Brief of Appellant at 17. The trial court did not exclude all evidence about the "content" of the post. It excluded the officer's interpretation of the post as improper opinion evidence, and the fact that police put out a "BOLO" in response to the post. The trial court recognized in its ruling denying the motion for mistrial that the focus of the in camera hearing was on the relevance of the "BOLO." (R.835). It explained he intended that the State could ask whether the post gave police "cause for concern," but that he was not expecting the State to use the word "retaliation" in its question. (R.836).

Regardless, the State never offered the content of the post; State's Exhibit #117 was not admitted at trial. More importantly, the trial court sustained the objection to the solicitor's question about whether the officer "believed" State's Exhibit #117 indicated there would be retaliation for Parker's murder. (R.689). Investigator Blackwell did not answer the question and the solicitor immediately moved on. Consistent with trial court's ruling, Blackwell did not offer an opinion about the meaning of the Facebook post.

The trial court correctly refused to grant a mistrial based on this unanswered question. Hurley was not prejudiced because the officer never responded. The question itself did not introduce any irrelevant or offensive subject matter. Proving retaliation as motive was the purpose of the all of the testimony regarding the association between Parker, Adams, the victims and defendants, and a major focus of the State's case. Even defense counsel recognized there

was no basis to prevent the State from arguing its theory of the case, and that it could contest this to the jury. The trial court correctly ruled this evidence admissible.

This was the obvious purpose of the Facebook evidence. There was no objection when the solicitor laid the foundation for its retaliation with the Facebook photos. (R.628–29). The State had previously elicited from Goode and Parks that they were associates and "hung out" with Adams. (R.485, 498). Blackwell testified he checked social media pages "to see who they associate with and hang out with." (R.629). He then testified, still without objection, that each defendant and Alston were friends with Parker on social media. (R.630–31). Without objection, Blackwell testified Parks and Goode were "friends with or associated with Ji'Tavius Adams, who was convicted of killing Parker." (R.631).

Following a hearing on Reid's objection to the Facebook photos coming in, the solicitor continued to elicit testimony from Blackwell about Jakevius Parker's murder. (R.686). It was obvious where the solicitor was going with these questions. The relationship between these various individuals was extremely important to the case, as it was the only evidence establishing motive. Regarding the photos documenting the relationships, the court found "the probative value of the photographs far outweigh any unfair prejudice to the defense, because basically the photos form the basis for how this witness and the other investigators came to believe these people knew each other, were close friends with one another, and were such close friends that if one of their group was killed they would want to exact revenge." (R.668).

The evidence about the respective prior relationships between Adams, Parks, and Goode and Parker, Hill, Reid and Hurley was extremely probative because it tended to establish motive. Investigator Blackwell never gave an opinion about his "interpretation" of State's Exhibit #117, and the post itself was never admitted despite its extremely high probative value. There was no

improper testimony introduced. Questions of counsel are not evidence. The trial court correctly refused to grant a mistrial based on an unanswered question concerning subject matter which was a central focus of trial and which was essential to the jury's deliberations. This Court should affirm.

V. The trial court correctly charged the law pertaining to circumstantial evidence.

Hurley claims the trial court erred by "failing to define the meaning of 'substantial circumstantial evidence.'" Brief of Appellant at 19. His argument is apparently premised on the fact that the trial court did not read the jury the Dictionary.com definition of the word "substantial" when charging the jury. The trial court correctly explained circumstantial evidence to the jury and was not required to give any additional definitions. This Court should affirm.

Standard of review.

To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant. State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 583–84 (2010). Failure to give requested jury instructions is not prejudicial error where the instructions given afford the proper test for determining the issues. Id. An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion. Id.

Discussion.

At trial, Hurley joined in Reid's motion to read the jury a definition he pulled from the internet defining "substantial" as "of considerable importance. Or, you know, it's important. It's essential. It is significantly great." (R.981, 986). The trial court declined to read the definition from the internet. It explained circumstantial evidence to the jury as follows:

> The law makes no distinction between the weight to be given to either direct or circumstantial evidence. However, to the extent the State relies on circumstantial evidence, the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt.

> If these circumstances merely portray the defendant's behavior as suspicious, then the proof has failed. The State has the burden of proving the defendant guilty beyond a reasonable doubt . . . . regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two."

(R.1199).

This is the exact language identified in State v. Logan as the proper charge to be given when a defendant requests a circumstantial evidence charge. State v. Logan, 405 S.C. 83, 99, 747 S.E.2d 444, 452 (2013). The trial court followed the supreme court's explicit instructions and gave the appropriate charge. The court was not further required to read the definition of the word "substantial" pulled from the internet. Doing so would not have aided the jury's understanding of the law. The meaning of "substantial circumstantial evidence" is one in the same as the Logan instruction and was adequately explained to the jury. Mattison, 388 S.C. at 479, 697 S.E.2d at 583 ("The trial court is required to charge only the current and correct law of South Carolina. . . The substance of the law is what must be charged to the jury, not any particular verbiage.").

The trial court thoroughly and repeatedly instructed the jury that the State must prove every element of every crime beyond a reasonable doubt, and correctly defined that term. (R.1194–95, 1197, 1199–1200, 1204, 1205, 1208–9). See State v. Cherry, 361 S.C. 588, 592, 606 S.E.2d 475, 477 n.3 (2004) (noting, in the context of a challenge to a trial court's circumstantial evidence charge, the "trial court also gave a very thorough 'reasonable doubt' charge"). This is the cornerstone of a jury instruction in a criminal case, and further attempts to elaborate on the weight to be given to certain types of evidence are likely to confuse the jury. Id. at 601, 606 S.E.2d at 482 (citing Holland v. United States, 348 U.S. 121, 139–40 (1954) (explaining "where the jury is properly instructed on the standards for reasonable doubt . . . an

additional instruction on circumstantial evidence is confusing and incorrect . . . .")). The trial court properly charged the jury. This Court should affirm.

VI. The trial court correctly refused to direct a verdict.

The trial court correctly denied Hurley's motion for directed verdict. The evidence, viewed in the light most favorable to the State, tended to show Hurley participated in a scheme to murder Parks and Goode. This Court should affirm.

Standard of review.

On appeal from the denial of a directed verdict, this Court views the evidence and all reasonable inferences in the light most favorable to the State. State v. Butler, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014). If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury. Id.

Discussion.

When ruling on a directed verdict motion, the trial court views the evidence in the light most favorable to the State and must submit the case to the jury if there is "any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced." State v. Bennett, 415 S.C. 232, 236–37, 781 S.E.2d 352, 354 (2016). "The court must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt. This objective test is founded upon reasonableness. Accordingly, in ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." Id.

Jameel Wilson, the handyman at Cardinal Glen Apartments, saw a black Camry slowly driving around the apartment complex "a couple times" before the shooting. (R.381). There

were several people in the car and "it looked like they were looking for something." (R.381). The car had tinted windows, but he could tell the two back seat passengers had "twists" in their hair. (R.384–85). The second time the Camry rode through, it paused in the back side of the complex and then sped away onto the main road. (R.382). Shortly after, he heard shots coming from Hillcrest Apartments. (R.383). This testimony strongly suggests a group consisting of at least three individuals—with two in the back seat—were looking for Parks and Goode or otherwise preparing to commit the shooting. His description of a "black car" matches the description of the car Hurley was driving. His description of the car's occupants matched the defendants. Stephanie Moss testified she saw a black car—which she at first thought was her cousin's Camry—pull up outside her apartment and there were "about three" boys in the car. (R.397, 407). She heard gunshots and went into her bedroom with her son. Five minutes later she went outside and saw a gun laying in the parking lot. (R.399). This testimony further supports that Hurley was driving the car carrying the shooters.

Hurley admitted to being near the scene of the shooting. He claimed he went to pick up his co-defendant Reid from the apartments. He claimed he saw Alston running down Parkway and picked him up. Hurley's story was not believable.

It would be an extraordinary and unbelievable coincidence that Hurley's friend Alston happened to be shot at the exact time he was allegedly picking up Reid. Furthermore, Hurley's story was inconsistent with the other evidence. Paul Hawthorne saw a black car at the Gardens at Parkway near Moss's apartment where a handgun was later recovered. (R.428). The car sped away contemporaneously with Hawthorne picking up Hill to take him to the hospital. The back passenger side door was open and there were feet hanging out. (R.429). This was obviously

Hurley's car and contradicts his story that he picked up Alston on Parkway rather than inside the apartment complex at the scene of the shooting. (R.1060–62, 1126–27).

Hurley dumped Alston at the hospital and fled the scene. He did not call police. Hurley gave little explanation for why he fled so quickly from the hospital. He testified: "I had a lot to do and it really threw off my schedule." (R.1057). He testified Alston was covered in blood but denied cleaning the car. There was no blood in the car when it was searched. (R.1063). Again, the car matched the description given by Wilson and Moss. Hurley arrived at the hospital less than two minutes after Goode called 911. (R.1115).

These facts, viewed in the light most favorable to the State, support a finding that Hurley conspired to attempt to kill Parks and Goode, and served as an accomplice to the shooters. The trial court correctly refused to direct a verdict. This Court should affirm.

VII. Hurley failed to demonstrate error, much less cumulative error.

Hurley argues this Court should reverse under the cumulative error doctrine. But because Hurley has failed to show reversible error in any of his previously raised issues, this argument fails as well. This Court should affirm.

In addition to his other arguments, Hurley argues the trial court "rushed the case." Brief of Appellant at 27. This assertion is meritless. Hurley complained at trial that he was concerned about the court rushing the case, but this complaint was unwarranted. The court merely expressed on isolated occasions that he did not want unduly cause the jury to wait while the court addressed legal matters. This is commonplace and appropriate. Furthermore, Hurley fails to show how he was prejudiced. He claims the court "denied the request . . . to excuse the jurors from the courtroom for the Court to consider the mistrial motion when the Solicitor disregarded this Court's instructions limiting the trial testimony of Officer Blackwell." Brief of Appellant at 27. But the trial court returned to that issue later, allowing the defense to fully air their

complaints on the record. (R.830–839). The trial court did not rush to deny the mistrial motion. It thoughtfully considered the motion after lengthy argument and correctly denied the motion. Hurley has failed to identify any error, much less cumulative error. This Court should affirm.

VIII. The trial court properly considered Hurley's gang affiliation in sentencing.

Hurley claims the trial court erred by considering evidence of his gang affiliation because this fact was not "found by the jurors nor proven beyond a reasonable doubt." Brief of Appellant at 28. This argument fails because the sentencing court is not limited to the facts presented to the jury. The trial court properly considered all the evidence presented during the course of the trial, including facts presented during a proffer but not admitted into evidence. This Court should affirm.

Standard of Review.

An appellate court has no jurisdiction to review a sentence, provided it is within the limits provided by statute for the discretion of the trial court, and is not the result of prejudice, oppression or corrupt motive. State v. Franklin, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976); Edwards v. State, 392 S.C. 449, 453, 710 S.E.2d 60, 63 n.1 (2011).

Discussion.

In a sentencing hearing, the court is not bound by evidentiary rules and may consider any reliable information regardless of its source. State v. Gulledge, 326 S.C. 220, 228, 487 S.E.2d 590, 594 (1997). The inquiry is broad in scope and a judge has an obligation to consider information material to punishment. Hayden v. State, 283 S.C. 121, 123, 322 S.E.2d 14, 15 (1984).

Hurley relies on State v. Simuel, 357 S.C. 378, 593 S.E.2d 178 (Ct.App. 2004), but he mischaracterizes its holding. There, the sentencing court applied a statutory sentencing enhancement, the factual basis of which was not alleged in the indictment. The enhancement

subjected the defendant to an entirely different sentencing range. Because the defendant was not given notice that he would be subjected to the increased penalty, the supreme court held he could not be subjected to the increased sentencing range. Likewise, in Apprendi v. New Jersey, 530 U.S. 466 (2000), the United States Supreme Court addressed the application of a statutory sentencing enhancer which increased the defendant's exposure from 10 to 20 years without notice and after the defendant pled guilty. The application of the sentencing enhancer after the fact and without notice in the indictment violated due process.

Here, the court's consideration of Hurley's gang affiliation did not increase the maximum sentence he was facing. There was no "enhancement" of the sentencing range for either charge. Accordingly, Simuel and Apprendi are not applicable. The trial court properly considered legitimate, reliable evidence showing Hurley's gang affiliation. This evidence was excluded from trial because of its potential to cause unfair prejudice, not because it was not reliable. The State presented extensive, reliable evidence that gang affiliation was the motive for this shooting during an in camera hearing. (R.111-295). Investigator Blackwell testified specifically to evidence of Hurley's gang affiliation, including a photograph of him "holding the Eastside hand sign up and hanging out with gang members . . . ." (R.276–281). The trial court acted within its discretion and sentenced Hurley within the statutory range for the crime for which he was indicted, tried, and convicted. This Court should affirm.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

Respectfully submitted,

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July 1, 2024

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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY

Court of General Sessions
The Honorable Frank R. Addy, Circuit Court Judge

Appellate Case No. 2022-001441

THE STATE, Respondent,

v.

DASHAWN CHAZZ HURLEY, Appellant.

CERTIFICATE OF COUNSEL

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

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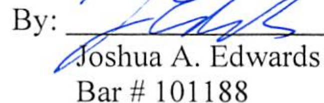
By: 
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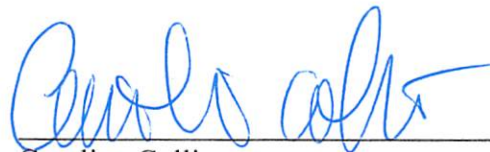
THE STATE,	Respondent,
v.	
DASHAWN CHAZZ HURLEY,	Appellant.

PROOF OF SERVICE

I, Caroline Collins, certify that I have served the within Final Brief of Respondent on E. Charles Grose, Jr., Esquire, counsel of record for the Appellant, by electronic mail to the address listed in AIS.

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

This 1st day of July, 2024.



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To:	Charles Grose
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Date:	Monday, July 1, 2024 3:19:00 PM
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Good Afternoon Mr. Grose,

Attached please find the Final Brief of Respondent in The State v. Dashawn Chazz Hurley (2022-001441). This will be submitted to the South Carolina Court of Appeals today via the AIS OneDrive System.

If you will, please confirm receipt.

Thank you,

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