

Dear MS. Kitchings,

The State of South Carolina

V.

Earl E. Valentine Jr.

**RECEIVED**

AUG 12 2024

SC Court of Appeals

Indictment Nos.: 2024-GS-41-0001 & 2024-GS-41-0002

On Thursday, March 14, 2024 Defense Counsel requested, & was granted, (10) days to submit post-trial motions. Defendant seeks a new trial based on the cumulative-error doctrine. And was denied a new trial.

In this case there was Facebook messages placed in evidence that would prove Montax's lied on the stand against me but all of the messages was not shown to the jury. I also told my counsel things that he never spoke on to the court such as who owned the 50 round drum & the ammo found at the resident. My brother also stayed at the resident & he owns a firearm in his name.

Also in this case the mother of my  
two Daughters Cousin was on the Jury

Stand in this case & I can prove it.

I need to know what steps to take.

I tried to reach out to my Lawyer who  
represented me in this case but he says  
there is nothing else he can do. I was  
represented an appeal Attorney but I haven't  
heard anything from him/her.

If you can please send a copy back in the  
mail.

With kindest regards, I am

Very truly yours,

Earl Valentin

STATE OF SOUTH CAROLINA  
COUNTY OF SALUDA

Eleventh Circuit Solicitor's Office,

Prosecutor,

v.

Earl Eugene Valentine, Jr.

Defendant.

IN THE CIRCUIT COURT/GENERAL  
SESSIONS  
FOR THE ELEVENTH JUDICIAL CIRCUIT

Indictment Nos.: 2024-GS-41-0001 & 2024-  
GS-41-0002

MOTION FOR A NEW TRIAL

RECEIVED

AUG 12 2024

SC Court of Appeals

2024 AUG 25 AM 9:55  
Friedl Clerk of Court, Saluda, SC.

NOW COMES the Defendant, by and through the undersigned Counsel, who moves for a New Trial pursuant to S.C. Code Ann. §17-23-110 after a jury verdict was found in favor of the State on the above-listed indictments on Thursday, March 14, 2024. Defense counsel requested, and was granted, ten (10) days to submit post-trial motions. Specifically, Defendant seeks a new trial based on the cumulative-error doctrine. In addition, Defendant renews all prior objections, pre-trial, and trial motions at this time. Furthermore, Defendant moves that the evidence as presented was insufficient as a matter of law for the jury to return the verdict that was returned.

Law

The “[c]umulative error doctrine provides relief to a party when a combination of errors that are insignificant by themselves have the effect of preventing a party from receiving a fair trial and requires the cumulative effect of the errors to affect the outcome of the trial.” State v. Johnson, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999) (citing Tennant v. Marion Health Care Foundation, 194 W.Va. 97, 459 S.E.2d 374 (1995)). “[T]he aggregation of errors may produce a cumulative effect of prejudice, where individually, the prejudice is insufficient to justify reversal.” State v. Freeman, 319 S.C. 110, 123, 459 S.E.2d 867, 875 (Ct. App. 1995).

ATTEST: TRUE COPY

*Sheri C. Coleman*

Clerk of Court  
Saluda, S. C.

## Analysis

Multiple abnormalities occurred in the Courthouse throughout this case. As a result of these abnormalities, Defendant received an unfair trial.

### **1. Inappropriate outburst by member of the jury pool.**

The jury pool was drawn on Tuesday, February 12, 2024 in the Saluda County Courthouse. Of the 200 people notified, only sixty-eight (68) appeared. During the Court's preliminary roll call of the jury pool, Juror 114 stood up, gave his name and number, and then proceeded to state loudly "I'm a firm believer that those who shed innocent blood . . ." before he was cut off by the Court. Defense counsel moved for a mistrial on the basis that the jury pool was now tainted. The Court denied Defense counsel's motion and decided to dismiss the juror at a more appropriate break, but unfortunately Juror 114 brought additional attention to himself throughout the qualifications by standing up in response to two more questions, one of which was "Are you over the age of 65?" to which he responded "No." and sat down. The Trial Court dismissed him at the break before Voir Dire, and then asked the jury pool if they had been influenced by the juror such that they could not be fair and impartial; no one responded that they had.

### **2. Dismissal of Jurors.**

Out of an abundance of caution, the Court and counsel for both the State and the Defendant elected to place three (3) alternates on the jury. During the lunch break before the trial could begin, all three (3) alternates had to be used such that the trial began with only twelve (12) jurors.

- a. Juror 42, who the Court had asked to be foreman, remembered he knew one of the witnesses as his "probation officer."

she had any discussions with her husband and whether she knew he would be coming. Juror 8 appeared to be credible to both the Court and counsel when she stated that she had told her husband not to come to Court and that she could not discuss the case with him. Based on her responses, the Court ultimately denied Defense counsel's motion for a mistrial and determined that if the case went to the following day, all of the jurors would be sequestered.

**4. Relocation of County Council Member.**

After breaking for lunch, the juror's husband relocated in the gallery from the side with the jury box, where he was blocked from viewing the jury by the State's electronic equipment, to the opposing side of the gallery, such that he was in full view of the jury box. When Defense counsel realized this, she asked for a discussion in chambers with the Court and opposing counsel. In chambers, the Court assured all counsel that she and her law clerk, as well as one of the Court room deputies, were watching the County Council Member to ensure he made no signals or motions towards the jury box. Ultimately, the Court determined, and all counsel agreed, that further addressing the issue in the courtroom would only serve to draw attention to the juror's husband and potentially affect Juror 8.

**5. Juror Notes.**

Shortly after the jury began deliberations around 6 pm, the jury produced three (3) notes.

**a. Note One**

The first note from a juror asked why certain interviews and videos referenced during the trial, but not admitted into evidence, were unavailable to view.

cumulative prejudicial effect of the first error snowballed into a situation in which the Defendant could not receive a fair trial. Three jurors were dismissed before opening statements, which meant that there were no alternates available when Juror 8's husband appeared in the gallery. Rather than dismiss Juror 8 and declare a mistrial, the Court chose to sequester the jury in another county.<sup>1</sup>

Ultimately, though the jury declared various hindrances to beginning deliberations at 6 pm, they were left to deliberate with the hopes that they would not have to be sequestered. However, the jury then encountered technical difficulties, meaning that, of the approximately 2 hours and 10 minutes the jury was out, they were not engaged in deliberations for the entirety of this time period. Considering that this jury believed there was a lot of evidence to evaluate, as indicated by the third juror note, the jury clearly rushed its verdict.

Ultimately, the jurors that rendered a verdict in this case heard an improper prejudicial outburst, were exposed to other jurors who knew witnesses and were subsequently dismissed, knew that Juror 8 had been questioned by the judge about something and could see her husband, a county figure, in the gallery when they returned, began deliberations at 6 pm and were denied rest when they expressed exhaustion because of an unknown sequestration order. Any one of these issues alone may have improperly influenced their verdict. The cumulative effect of these issues over the course of the trial almost certainly improperly influenced their verdict. Therefore, the Court should grant Defendant's motion for a new trial. State v. Smith, 383 S.C. 159, 168, 679 S.E.2d 176, 181 (2009) ("When it is made to appear that anything has occurred which may have improperly influenced the action of the jury, the accused should be granted a new trial, although he may appear to be ever so guilty, because it may be said that his guilt has not been ascertained in the manner prescribed by law.") (internal citations omitted).

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<sup>1</sup> The Clerk of Court had organized sequestration to take place in Newberry due to a lack of available appropriate venues in Saluda.

**b. Note Two**

The second note from a juror notified the Court that the juror did not have childcare after 7 pm.

**c. Note Three**

The third note from a juror requested that the jury be allowed to go home and deliberate in the morning, stating that there was a lot of evidence to go through, she was tired and hungry, and she had an 88-year-old mother who needed her. Importantly, this juror had not stood up during jury qualifications when asked whether anyone had someone over the age of 65 at home.

With the consent of counsel, the Court addressed the first note by rereading her jury instructions and the second note by letting the juror have access to her cell phone in the presence of a bailiff to make childcare arrangements. However, the Court and counsel thought it best to decline to address the third note, as the jury had not yet been informed that they were to be sequestered in Newberry overnight if deliberations lasted to the next day.

**6. Technological difficulties and delays during deliberation.**

Once deliberations began, the bailiff was informed that the jury could not play one of the videos in evidence. The judge's law clerk went in to attempt to help, but ultimately the Court decided to clear the Courtroom and let the jury come in to watch it there. This process took time. In addition, at 7:30 pm, the Clerk of Court took food orders from the jurors for dinner. The verdict came back around 8:10 pm.

**Analysis**

It is well established that a criminal defendant is entitled by the Constitution to a fair trial, not a perfect one. State v. Mizell, 332 S.C 273, 504 S.E.2d 338 (Ct. App. 1998). In this case, the

- b. Juror 57 was recognized by Chief Deputy Quattlebaum as someone he knew outside of work. He had not stood up during the witness inquiry during Voir Dire. He was unable to give the Court a reason why.
- c. Juror 177 realized she may have known one of the witnesses and declared that she would be unable to be impartial if he testified as she respected him very much.

Unfortunately, all of this was discovered, and these jurors were dismissed, after they had already been in the jury room.

**3. Proffer of testimony with a juror's husband in the gallery.**

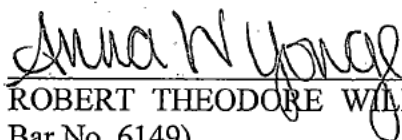
During Defense counsel's cross examination of Chris Hartless with the Saluda County Sheriff's Department, the State objected to Defense counsel's line of questioning and the jury was excused so that she could state her objection more fully. The jury was returned to the jury room and counsel for the State began to discuss her concern that the current line of questioning would lead to opening the door to discussion of either a prior double homicide, in which the Defendant had been a suspect, or the current charges the Defendant had for a separate, singular homicide. Ultimately, the Court and counsel reached a consensus for how to proceed with the questioning to avoid improperly opening the door to additional murder charges. However, unbeknownst to the Court or counsel, Juror 8's husband was present during the entirety of the discussion, including the proffer. The Clerk of Court recognized this particular person as a local County Council member and brought it to the Court's attention. Defense counsel immediately moved for a mistrial. After much discussion in chambers between the Court and counsel, out of an abundance of caution the Court decided to order the individual not to discuss anything he had heard with his wife, nor to have any communication with her. In addition, the Court questioned Juror 8 regarding whether

**Conclusion**

Despite the Court's best efforts to preserve Defendant's right to a fair trial, the cumulative effect of these errors clearly deprived Defendant of one, and, as such, Defendant hereby moves to be granted a new trial.

WILLIAMS, STITELY & BRINK PC

By:



ROBERT THEODORE WILLIAMS (S.C.  
Bar No. 6149)

ANNA WILLIAMS YONGE (S.C. Bar No.  
102407)

Attorneys for Defendant

200 East Main Street

Lexington, SC 29072

(803) 359-9000

twilliams@wsblegal.com

ayonge@wsblegal.com

Lexington, South Carolina  
March 21, 2024

Earl Valentine

SCDC ID: 00393590

Kirkland Correction

1344 Broad River Rd

Columbia, SC 29210

COLUMBIA SC 290

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Jenay Kitchings, Clerk of

SC Court of Appeals

P.O. Box 11629 Columbia, SC 29211

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