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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Daniel McLeod Coble, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMIRA U. DAVIS,

APPELLANT

APPELLATE CASE NO. 2023-001215

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I.

Whether the trial court reversibly erred by failing to grant a directed verdict of acquittal for the State's failure to produce sufficient evidence disproving the elements of self-defense?

II.

Whether trial court reversibly erred by coercing the jury during deliberations where the trial court effectively instructed an Allen[2] charge twice over the course of lengthy deliberations where it was aware of the jury split, and where it used coercive language in its instructions?

III.

Whether the trial court reversibly erred by refusing to remove a juror and grant a mistrial where evidence was produced indicating Juror #285 spoke with non-jurors regarding the case and juror deliberations, where the Trial Court refused to even question Juror #285 about the matter, and where no alternate jurors remained?

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2 Allen v. United States, 164 U.S. 492, 501–02, 17 S.Ct. 154, 157, 41 L.Ed. 528 (1896).

STATEMENT OF THE CASE

Appellant Jamira U. Davis was indicted for murder by the Richland County grand jury. The charge arose from an incident occurring in Hopkins, South Carolina, in the early morning of January 22, 2021. R. 14, ll. 1-13; R. 958-959.

Appellant's case proceeded to trial before the Honorable Daniel McLeod Coble and a jury from June 26th through 30th, 2023, and July 3rd, 2023. Hope L. Demer, Laura Young, Luke Shealey, and Brian Shealey (collectively, Trial Counsel) represented Appellant, while C. Dale Scott and Jack Jackson, Jr., represented the State. R. 1; R. 54; R. 373; R. 617; R. 913.

After hours of deliberations, the jury found Appellant guilty as charged. R. 896, ln. 6; R. 898, ln. 10; R. 901, ll. 4-6; R. 903, ln. 18; R. 904, ln. 22—R. 905, ln. 1; R. 910, ll. 1-17; R. 922, ln. 4; R. 925, ll. 3-6; R. ln. 13; R. 930, ln. 1; R. 930, ln. 20—R. 931, ln. 15. The trial court imposed a sentence of thirty-five (35) years. R. 952, ll. 8-11; R. 961-962.

STATEMENT OF THE FACTS

On the night of January 21, 2021, Appellant Jamira U. Davis (Appellant) drove from her apartment on Garner's Ferry Road in Columbia, South Carolina, to Hartsville, South Carolina, with her girlfriend due to the death of her girlfriend's grandfather. They returned home to their apartment at approximately 1:49 am on January 22, 2021. Shortly after, Appellant left to visit the home of Brandon "Boleg" Burden (Boleg) on American Avenue in Hopkins, South Carolina, to obtain marijuana. R. 448, ll. 16-21; R. 697, ln. 5—R. 699, ln. 5; R. 737, ll. 15-16. Appellant knew Boleg due to his prior long-term relationship with Appellant's mother; despite his prior abusive conduct toward Appellant's mother, Appellant viewed him in a fatherly role to her at the time. She still frequented Boleg's house about two to three times per month; he would provide Appellant with marijuana—as he had since Appellant was in school. The two would smoke together and talk. R. 678—R. 687, ln. 23. Along the way to Boleg's house, Appellant briefly stopped to visit another friend, Ishmael, whereupon the two talked and smoked marijuana. She then continued driving to Boleg's. R. 699, ln. 6—R. 700, ln. 1; R. 730, ll. 4-23.

Appellant arrived at Boleg's Hopkins home at approximately 2:46 am. Boleg was on the porch, which Appellant thought was odd. Earlier that night, Boleg had been drinking liquor, consuming cocaine, and losing money gambling. R. 385, ln. 1—R. 393, ln. 15; R. 448, ll. 16-21; R. 486, ln. 13—R. 488, ln. 9; R. 506, ln. 11—R. 509, ln. 7; R. 700, ll. 4-10. Appellant nonetheless walked into Boleg's small house, and sat down. The two talked and smoked marijuana while sitting on a couch in Boleg's small living room. The television was on, as was a light in the kitchen, the living room was dark. R. 700, ln. 12—R. 702, ln. 25; R. 731, ln. 3—R. 732, ln. 16; R. 957. Although Boleg had a hand in his pants while on the couch, Appellant did

not think much of it at the time even though it was not something Boleg usually did. R. 703, ll. 1-11.

After receiving a call from her girlfriend at approximately 3:40 am asking where she was, Appellant indicated she had the marijuana and was leaving. R. 703, ll. 12-24. Boleg then moved to sit directly next to Appellant on the couch such that their legs were touching, which made Appellant uncomfortable. Boleg then put one of his hands in Appellant's crotch on her privates. Appellant immediately jumped up, said, "I'm finna [sic] go," and tried to move to the front door. R. 703, ln. 25—R. 704, ln. 19. However, Boleg also got up, grabbed Appellant from behind, pulled her backwards, and "slung" Appellant to the floor on her hands and knees by the ottoman, while saying to Appellant, "let me talk to you, let me talk to you talk." R. 704, ln. 20—R. 706, ln. 6; R. 741, ll. 6-10; R. 957.

While holding herself up with her left arm, Appellant grabbed one of Boleg's handguns on the ottoman with her right hand and put it under her arm. R. 706, ln. 8—R. 708, ln. 19. After Boleg pulled Appellant away from the front door, he was on Appellant's back by the ottoman and trying to move her towards the bedroom. If he had taken one step back from his location, he would have been in the kitchen of the small house. R. 709, ln. 3—R. 710, ln. 25; R. 957. Appellant was frightened, and believed Boleg was going to rape her. Although Boleg was shorter than her, Appellant stated that Boleg was stronger than she was, and that she grabbed the gun as the only thing that could help her. R. 710, ll. 20-23; R. 711, ll. 1-16. Appellant reached around herself, fired the gun multiple times, and felt Boleg lift off from her once she began shooting. R. 711, ll. 17-19; R. 712, ll. 3-4. She then got up, ran out the front door, and into her car. Once in her car, she tried to compose herself, and drove home to Columbia. R. 712, ll. 5-24; R. 957.

Later that morning, emergency personnel were alerted to a fire at Boleg's home. By the time an engine from the Columbia Fire Department at approximately 6:16 am, the small home was already engulfed in flames. R. 114, ln. 1–R. 116, ln. 10. Once the fire was put out through the use of large quantities of water, the small, burned-out house was examined. Boleg's charred remains were found face-down in the kitchen area, which was right off the living room. R. 120, ln. 15—R. 121, ln. 23; R. 141, ll. 17-22; R. 144, ln. 1–R. 145, ln. 25. Autopsy results indicated Boleg was already deceased before any burning occurred to his body. Specifically, he had three to four gunshot wounds. R. 476, ll. 7-16; R. 485, ll. 2-7; R. 956. Further, as the State would concede, the fire was caused by Boleg's kerosene heater being unwatched hours after his death. R. 335, ll. 13-20; R. 102, ll. 4-11.

Based upon examination of Boleg's phone records, Richland County Sheriff's Office investigators spoke with Appellant at their headquarters on February 1, 2021. R. 187, ln. 9—R. 188, ln. 12; R. 251, ll. 8-16. Over the course of over three hours, Appellant acknowledged she shot Boleg when he tried to sexually assault her. R. 201, ln. 14—R. 208, ln. 2; R. 299, ln. 7—R. 313, ln. 7. She was arrested and charged with murder.

Appellant's case proceeded to a jury trial from June 26th through 30th, 2023, and July 3rd. R. 1; R. 54; R. 373; R. 617; R. 913. At the conclusion of the cases-in-chief for both the State and Appellant, the defense moved for a directed verdict of acquittal. Specifically, Trial Counsel asserted the State failed to produce any direct or substantial circumstantial evidence disproving self-defense. R. 516, ln. 20—R. 521, ln. 25; R. 526, ln. 6—R. 528, ln. 8; R. 785, ln. 22—R. 786, ln. 14. After listening to argument from both parties, the trial court denied the motion and held as follows:

> In the light most favorable to non-moving party, I believe that there—evidence does exist. *There are credibility issues as to*

> *it. As to the stories changing or not changing*, I believe that there is evidence that should go to the jury for this case.
>
> Your motions are noted for the record. And they are all denied. All right.

R. 787, ll. 8-13 (emphasis added).

After closing arguments and instruction by the Trial Court, the jury began deliberations at 4:37 pm on Friday, June 30th. R. 896, ln. 6. The jury subsequently sent notes to the Trial Court, including one after several hours of deliberations indicating they were stuck. Specifically, they asked what would happen "if we cannot come to a unanimous decision." The note further stated the jury was split "9-3 Guilty." R. 902, ln. ; R. 954 (emphasis in original). Interestingly, the Trial Court failed to relay the entirety of the jury note to Trial Counsel by failing to relay the jury split.[3] The Trial Court brought in the jury at 8:12 pm, and gave the following instruction:

> Thank you, Mr. Foreperson. I received your note. What I want to do is *I want to encourage you to continue your deliberations*. I appreciate your patience and service this week. I will reiterate one of my instructions that I gave to you earlier this afternoon when it comes to deliberation.
>
> Each of you must decide the case for yourselves. But *you should do so only after you have impartially considered all of the elements, discussed it fully with other jurors, and listen—listen to the views of your fellow jurors*.
>
> Do not be afraid to change your opinion if the discussion persuades you that you should, but do not come a decision simply

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[3] The Trial Court informed the parties as follows:

> Got a note from the jury. Sounds like they want to know what they can do. If they cannot come to a unanimous decision, what happens?
>
> So I believe at this point, we're getting close to an Allen charge.

R. 902, ll. 4-8.

> because other jurors think it's right. *It is important that you attempt to reach a unanimous verdict*. But of course, only if each of you can do so after having made your own decision. Do not change an honest belief on the weight and effect of the evidence simply to reach a verdict. In other words, do not change your opinion solely for the sake of reaching a unanimous verdict.
>
> All right.
>
> Mr. Foreperson, *I'm going to ask that y'all continue your deliberations*. And I thank you for your service. You may retire to your jury deliberation room.

R. 903, ln. 22–R. 904, ln. 25 (emphasis added). The jury was then sent back at 8:14 pm to continue deliberations. R. 905, ln. 1.

Hours later, the jury sent another note again indicating they were stuck and no movement occurred. Specifically, the foreman wrote as follows:

> All jurors are stuck in their opinions, without a final answer or vote. No change has happened in 3 hours. There is no productive things going on. Is there a certain time we are able to leave or is there a way we could come back at the next business day to further our deliberation? Again, there hasn't been any change within the 3 hours.

R. 905, ll. 8-19; R. 955. Trial Counsel argued the Court already provided what was effectively an Allen charge, and that the jury was hung even after lengthy deliberations. R. 905, ln. 23—R. 906, ln. 20. The State indicated an Allen charge was appropriate to inform the jury about the meaning of a mistrial. R. 906, ln. 22–R. 907, ln. 13. Trial Counsel again argued against it, averring to do so was a second Allen charge and coercive under statutory law as well. R. 907, ln. 14–R. 908, ln. 24. The Trial Court decided that its prior instruction was not an Allen charge; rather, it was simply "reconfirming their instructions to deliberate." R. 909, ll. 1-15. The Court indicated the most recent note asked to come back; as a result, the jury was summoned back to

the courtroom at 10:33 pm, and dismissed for the weekend with instructions to reconvene on Monday at 9:00 am. R. 909, ln. 6–R. 910, ln. 16.

On Monday, July 3rd, Trial Counsel renewed the motion for mistrial, again asserting that giving another Allen charge would be a prohibited second instruction on the matter. Counsel further pointed out the exasperated and emotional appearances of some jurors on the previous Friday night. R. 916, ln. 19–R. 917, ln. 8; R. 919, ln. 25—921, ln. 15. The Trial Court again denied the motion, stating "I believe I did not give an Allen charge at the beginning, that they were not hopelessly deadlocked. So it wasn't an Allen charge." R. 921, ll. 17-22. The Court then brought in the jury at 9:16 am, and instructed them to continue deliberations as follows:

> Good morning, ladies and gentlemen. Thank you for being here today promptly on time. I do appreciate that.
>
> After we left Friday, *I received the jury note about—that y'all are stuck*. So I'm going to read you what's called an Allen charge at this point.
>
> Ladies and gentlemen of the jury, when any matter is in dispute, it is not always easy for even two people to agree. Therefore, I understand when 12 people must agree, it becomes much more difficult. *It is important that you attempt to end this case without a single one of you doing violence to your conscience.* It is your duty as jurors to consult with one another and to deliberate with a view towards reaching an agreement if you can do so without violence to your individual judgment.
>
> Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberation, do not hesitate to reexamine your own views and change your opinion if convinced that your opinion is erroneous.
>
> No juror is expected to give up his or her opinion based on reasoning satisfactory to yourself merely for the purpose of being in agreement. And I want you to understand that. And do not surrender your honest convictions as to the weight or the effect of the evidence solely because the opinion of your fellow jurors is

> contrary to your opinion for the mere purpose of returning a verdict.
>
> It has never been intended that the verdict of the jury should be the verdict of any one person. On the other hand, *the verdict of the jury is the collective reasoning of all persons put together. The reason we have a jury is so that we might have the benefit of the collective thought and collective reasoning of the jury*. It may help to tell the other jurors how you feel about the case and why you think as you do. And I'm sure that you have been doing that already.
>
> On the other hand, it may help if the other jurors exchange views with you. And I ask that you listen to each other, and give the—to the others' thoughts such meaning as you think they should have.
>
> *I'm now going to ask you to again retire to the jury room for further deliberations, and see if you can reach a verdict in this case*. And let me close by reminding you again that while *it is important that you attempt to come to a decision*, you should do so without any juror doing violence to his or her own conscience. No juror is expected to give up an opinion based on reasoning satisfactory to himself or herself merely for the purpose of being in agreement.
>
> And ladies and gentlemen, *I want to reiterate, too, as I told you in the jury instructions, during your jury deliberation, you will deliberate* respectfully of every single other juror. As I just stated, *you will listen* courteously and respectfully. *That is an order of this Court.* You have an oath to deliberate with respect for every single juror.
>
> Ladies and gentlemen, also if it gets towards lunchtime, it takes us about an hour to order lunch. So if you're getting towards that time, let us know, and it take about an hour ahead of time. *I'm gonna let you, again, retire to your jury deliberation room and continue your deliberations*. Thank you.

R. 922, ln. 7–R. 925, ln. 5 (emphasis added). The jury was sent out of the courtroom at 9:20 am to once again deliberate. R. 925, ln. 6.

Additionally, prior to the Court's charge to the jury on July 3rd, Appellant moved for mistrial based on jurors by discussing the case outside of deliberations over the weekend.

Specifically, attorney Ashley Berry (Attorney Berry), who was unrelated to the case, testified before the Court that she overheard two men loudly discussing the case while poolside at the Woodlands Golf and Country Club on Sunday. She heard them discussing the jury trial, as well as details of jurors and the jury split. R. 917, ln. 9—R. 919, ln. 4; R. 925, ln. 10–R. 928, ln. 16. Further, Trial Counsel identified Juror #285 as the juror who previously spoke with the person discussing the case by the pool. R. 917, ll. 13—R. 918, ln. 18. Counsel asked for the juror to be removed as a remedy, and that a mistrial be granted due to the lack of any available alternate jurors at that time. R. 918, ll. 18-22.

Prior to Attorney Berry's testimony, the Trial Court held as follows:

> At this point, it's "someone heard someone say something." As your renewed motions, those are denied as previously stated.
>
> As the Juror 285, I don't think that rises to the level to violate her oath at this point. If we get more information, we'll talk to Ms. Berry about all these people that were allegedly at this pool saying all these things. Until this point, I believe that motion it does not rise to a violation of the oath. Your motion is denied.

R. 919, ll. 8-17. Trial Counsel specifically requested that the Court bring in Juror #285 for questioning, but that request was cut short by the Trial Court, and denied as follows: "Again, as of this point, I don't believe it rises to that level. So we're gonna bring him in. We're gonna read them the Allen charge." R. 919, ll. 18-24. After ordering the jury to continue deliberations, the Trial Court heard Attorney Berry's aforementioned testimony. However, the Trial Court did not bring out Juror #285 for questioning regarding discussions about the case and deliberations with non-jurors outside of the jury room.

Ultimately, the Court denied the mistrial motion on the record, ruling as follows:

> Before we bring the jury back, as to your motion for a mistrial, I'm going to deny it at this point. I've heard the testimony from Ms. Berry in conjunction with the oath and the

> instructions. And I believe it does not rise to that level. So your motion is noted for the record but denied.

R. 930, ll. 6-12. The jury was brought in immediately after and rendered its verdict at 11:22 am: Appellant was found guilty of murder. R. 930, ln. 20–R. 931, ln.15. After denying Appellant's renewed motions and motion for new trial, the Court sentenced Appellant to 35 years. R. 935, ln. 17–R. 936, ln. 5; R. 952, ln. 8-11; R. 960-961.

This appeal follows.

ARGUMENT

I. The trial court reversibly erred by failing to grant a directed verdict of acquittal for the State's failure to produce sufficient evidence disproving the elements of self-defense.

The State failed to muster any direct or substantial circumstantial evidence disproving any of the elements of self-defense. As such, the trial court reversibly erred in failing to direct a verdict of acquittal on the charge of murder.

"In criminal cases, the appellate court only reviews errors of law and is clearly bound by the trial court's factual findings unless the findings are clearly erroneous." State v. Dickey, 394 S.C. 491, 498–99, 716 S.E.2d 97, 100–01 (2011) (citing State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006)).

A trial court must direct a verdict of acquittal when the record does not contain evidence to support every element of the charged offense. See, e.g., State v. Brown, 360 S.C. 581, 586, 602 S.E.2d 392, 395 (2004); State v. Evans, 376 S.C. 421, 424, 656 S.E.2d 782, 783 (Ct. App. 2008) ("A defendant is entitled to a directed verdict when the state fails to produce evidence on a material element of the offense charged."); see also In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073 (1970) ("Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged."); Rule 19(a), SCRCrimP (West, Westlaw current through Dec. 1, 2011) ("[O]n motion of the defendant or on its own motion, the court shall direct a verdict in the defendant's favor on any offense charged . . . if there is a failure of competent evidence tending to prove the charge in the indictment."). When considering a motion for directed verdict of acquittal, "the trial court is concerned the existence or non-existence of

evidence, not its weight." Brown, 360 S.C. at 586, 602 S.E.2d at 395. Additionally, where uncontroverted facts establish self-defense as a matter of law, "the State is required to disprove the elements of self-defense beyond a reasonable doubt." Dickey, 394 S.C. at 499, 716 S.E.2d at 101 (emphasis added) (quoting State v. Wiggins, 330 S.C. 538, 544–45, 500 S.E.2d 489, 492–93 (1998)); see also State v. Butler, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014) (citing State v. Burkhart, 350 S.C. 252, 262, 565 S.E.2d 298, 303 (2002) (limiting application of the "beyond a reasonable doubt" standard to motions for directed verdict based upon self-defense for instances where fact are uncontroverted, and self-defense is established as a matter of law); but see State v. Oates, 421 S.C. 1, 19, 803 S.E.2d 911, 921 (Ct. App. 2017) ("we interpret Butler to stand for the proposition that our well-established directed verdict standard is not altered by a defendant's claim of self-defense.").

Under South Carolina law, self-defense justifies the use of deadly force when four elements are present:

> (1) The defendant was without fault in bringing on the difficulty;
>
> (2) The defendant ... actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger;
>
> (3) If the defense is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief ...; and
>
> (4) The defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

Id. (citing Wiggins, 330 at 545, 500 S.E.2d at 493; and State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984)). In the present case, regardless of whether the "beyond a reasonable doubt" or

"any evidence" standard is applied, the State failed to meet its burden of producing direct or substantial circumstantial evidence disproving one or more elements of self-defense.

First, the State failed to meet its burden disproving Appellant was without fault in bringing on the difficulty. The uncontroverted facts were that Appellant visited Boleg's house as a guest of Boleg. The two smoked marijuana together and talked until Boleg, who was drunk on liquor and had other illicit substances in his system as well, made unwanted sexual advances upon Appellant. Although the State asserted that Appellant was larger than Boleg, it produced no evidence controverting Appellant's testimony that Boleg was stronger than her. Additionally, Appellant testified that after Boleg put his hand on her crotch, he "slung" her to the ground when she tried to leave. This too was uncontroverted based upon Appellant's testimony and ultimate confession to police of the incident. As the State's own witness agreed, they were not in the business of procuring false confessions. R. 299, ll. 11-16.

The State also failed to disprove that Appellant was in imminent danger of either death or serious bodily injury, and that a reasonable person would have entertained the same belief. Specifically, Appellant stated she was in fear of being raped by Boleg. After Boleg pulled Appellant away from the front door, he was on Appellant's back by the ottoman and trying to move her towards the bedroom. R. 709, ln. 3—R. 710, ln. 25; R. 957. Appellant was frightened, and believed Boleg was going to rape her. Although Boleg was shorter than her, Appellant stated that Boleg was stronger than she was, and that she grabbed the gun as the only thing that could help her. R. 710, ll. 20-23; R. 711, ll. 1-16. Such fear is even more acute and reasonable where, as here, Appellant knew her assailant had been violent towards her mother in the past, and had seen him use a gun to perpetuate it. Indeed, any woman of reasonably prudent courage who was grabbed in her privates, thrown to the ground, and moved towards a bedroom by a

man—regardless of his height—would entertain the same belief of fear of death or serious bodily injury. Thus, the facts of the case readily showed that Appellant was in imminent danger of either death or serious bodily injury, and that a reasonable person would have entertained the same belief.

Finally, the State failed to meet its burden disproving the fact that Appellant had no other probable means of avoiding the danger other than to act as she did. Based upon the only direct evidence of what occurred, Appellant had no other probable means to leave Boleg's. She tried to leave as soon as Boleg put his unwanted hand on her crotch; but when she stood up to leave, Boleg grabbed her from behind and "slung" her to the ground. From behind, Boleg then attempted to move Appellant towards the bedroom. As the State's investigator agreed, such conduct could constitute a sexual offense against Appellant, as well as kidnapping. R. 307, ll. 1-18; R. 310, ln. 12–R. 311, ln. 5. Accordingly, the facts before the jury were that Appellant had no other probable means of avoiding the danger other than to act as she did.

In the face of this uncontroverted direct evidence, the Trial Court erroneously relied upon the inference that Appellant's statements during interrogation by police were contradictory to her ultimate confession when she finally told them what happened. Specifically, the Court held:

> In the light most favorable to non-moving party, I believe that there—evidence does exist. *There are credibility issues as to it. As to the stories changing or not changing, I believe that there is evidence that should go to the jury for this case*.

R. 787, ll. 8-13 (emphasis added). Yet, as the State's own witness agreed, the police are not in the business of obtaining false confessions. R. 299, ll. 11-16. Rather, Appellant's statements to police prior to her confession denied anything even happened. If the Trial Court relied upon those statements as evidence, then it would have been evidence that the incident never even occurred. In essence, the Trial Court's ruling, as well as the State's position in trial, was that the

jury should disbelieve parts of Appellant's testimony. Yet this position was without factual support in the record.

Additionally, the location of Boleg's remains, as well as the location of the shots on his body, likewise fail to disprove Appellant's claim of self-defense. First, after throwing Appellant to the ground next to the ottoman in the living room, Boleg had moved Appellant to a point at the entrance to the kitchen. As Appellant explained, if Boleg had taken one step back from his location at that time, then he would have been in the kitchen of the small house. R. 709, ln. 3—R. 710, ln. 25; R. 957. Her testimony also indicated that she reached around herself, fired the gun multiple times, and felt Boleg lift off from her once she began shooting. R. 711, ll. 17-19; R. 712, ll. 3-4. The gunshot wound to Boleg's leg and torso were consistent with appellant's account: Appellant first shot him in this manner, and Boleg immediately reeled back from her; then, upon her continued shooting, he collapsed in the kitchen where he was ultimately found. R. 476, ll. 7-16; R. 485, ll. 2-7; R. 704, ln. 25—R. 712, ln. 8; R. 956; R. 957. In other words, the only evidence in the record of what actually occurred on the morning of January 22, 2021 inside Boleg's tiny home on American Avenue in Hopkins was that he was shot by Appellant while she defended herself from his sexual assault.

Accordingly, the Trial Court reversibly erred in failing to grant a directed verdict of acquittal based upon the State's failure to disprove self-defense. The uncontroverted facts establish self-defense as a matter of law. As such, the State failed to disprove "beyond a reasonable doubt." Dickey, 394 S.C. at 499, 716 S.E.2d at 101 (emphasis added) (quoting Wiggins, 330 S.C. at 544–45, 500 S.E.2d at 492–93); see also Butler, 407 S.C. at 381, 755 S.E.2d at 460 (citing Burkhart, 350 S.C. at 262, 565 S.E.2d at 303. Further, even under the lesser "any evidence" standard, the State failed to produce any direct or substantial circumstantial evidence against the elements of

self-defense in the present case. Oates, 421 S.C. at 19, 803 S.E.2d at 921. Therefore, regardless of the standard applied, the State failed to meet its burden disproving self-defense. Accordingly, Appellant's conviction should be reversed, and she should be acquitted of the charge.

II. The trial court reversibly erred by coercing the jury during deliberations where the trial court effectively instructed an Allen[4] charge twice over the course of lengthy deliberations where it was aware of the jury split, and where it used coercive language in its instructions.

The Trial Court's repeated instructions to the jury to continue its deliberations and come to a verdict violated Appellant's constitutional and statutory rights. As a result, the jury was coerced during deliberations to reach a verdict. The jury informed the Court it was split at 9-3 to convict, and stuck in its deliberations; in response, the Trial Court instructed the jury to continue its deliberations, and stressed the importance that they attempt to reach a unanimous verdict. Hours later when the jury again informed the Trial Court that it was still deadlocked with no movement from its previous position, the Trial Court ordered them to reconvene on the following Monday morning; that Monday morning, the Court again charged them to continue deliberating, and sent them back. Under such circumstances, the Trial Court's repeated admonitions to continue deliberations and emphasis on reaching a verdict or decision amounted to impermissible coercion forcing a verdict.

"The trial judge has a duty to urge the jury to reach a verdict, but he may not coerce it." State v. Williams, 344 S.C. 260, 263, 543 S.E.2d 260, 262 (Ct. App. 2001). Section 14-7-1330 of the South Carolina Code provides as follows:

> When a jury, after due and thorough deliberation upon any cause, returns into court without having agreed upon a verdict, the court may state anew the evidence or any part of it and explain to it anew the law applicable to the case and may send it out for further deliberation. *But if it returns a second time without having agreed upon a verdict, it shall not be sent out again without its own consent unless it shall ask from the court some further explanation of the law*.

[4] Allen v. United States, 164 U.S. 492, 501–02, 17 S.Ct. 154, 157, 41 L.Ed. 528 (1896).

Id. (West, Westlaw current through 2024 Act No. 225) (emphasis added). The purpose of § 14–7–1330 is "to prevent forced verdicts, and to prevent undue severity of jury service." Buff v. S.C. Dep't of Transp., 342 S.C. 416, 420, 537 S.E.2d 279, 281 (2000) (citing State v. Freely, 105 S.C. 243, 247, 89 S.E. 643, 644 (1916)). "The granting or refusing of a motion for a mistrial lies within the sound discretion of the trial court whose ruling will not be disturbed on appeal in the absence of an abuse of discretion amounting to an error of law. State v. Wasson, 299 S.C. 508, 510, 386 S.E.2d 255, 256 (1989) (citing State v. Tuckness, 257 S.C. 295, 185 S.E.2d 607 (1971)). "It is universally recognized that a genuine inability of the jury to reach a unanimous verdict constitutes a manifest necessity for the declaration of a mistrial." State v. Robinson, 360 S.C. 187, 193–94, 600 S.E.2d 100, 103 (Ct. App. 2004) (internal citations omitted) (citing 21 Am.Jur.2d Criminal Law § 402 (2003). Further, "a mistrial declared by the judge following the jury's declaration that it was unable to reach a verdict ... remains the prototypical example [of] ... 'manifest necessity.'" Id. (quoting Oregon v. Kennedy, 456 U.S. 667, 672, 102 S.Ct. 2083, 72 L.Ed.2d 416 (1982)).

"The typical judicial mechanism for encouraging an indecisive jury is the Allen charge, in which jurors are instructed on, among other things, their duties to approach the evidence with an open mind and consider the opinions of their fellow jurors. If a jury, following additional deliberations in the wake of an Allen charge, remains deadlocked, section 14-7-1330 of the South Carolina Code of Laws is triggered." Robinson, 360 S.C. 187, 193–94, 600 S.E.2d 100, 103. While "the mere giving of the second *Allen* charge was not *per se* coercive," State v. Pauling, 322 S.C. 95, 99, 470 S.E.2d 106, 109 (1996), "[a]t the second indication of deadlock, courts typically inquire as to whether more deliberations would be beneficial to the jury, and the

issue of consent is determined from the jury's response." Robinson, 360 S.C. 187, 193–94, 600 S.E.2d 100, 103.

In the present case, the jury signaled twice to the Trial Court that it was stuck in its deliberations, and on both occasions the Trial Court instructed them to continue their deliberations. As such, Section 14-7-1330 was triggered; yet the record contains neither a consent from the jury to continue deliberations, nor an inquiry regarding the law at the time the Trial Court instructed them to continue deliberating.

The first occasion happened at 8:12 pm, well over three hours after the jury began deliberating the case at 4:37 pm. R. 896, ln. 6. Specifically, the jury asked what would happen "if we cannot come to a unanimous decision." Moreover, the note stated the jury was split "9-3 Guilty." R. 902, ll. 4-8 ; R. 954 (emphasis in original). The Trial Court brought in the jury at 8:12 pm, and gave the following instruction:

> Thank you, Mr. Foreperson. I received your note. What I want to do is *I want to encourage you to continue your deliberations*. I appreciate your patience and service this week. I will reiterate one of my instructions that I gave to you earlier this afternoon when it comes to deliberation.
>
> Each of you must decide the case for yourselves. But *you should do so only after you have impartially considered all of the elements, discussed it fully with other jurors, and listen—listen to the views of your fellow jurors*.
>
> Do not be afraid to change your opinion if the discussion persuades you that you should, but do not come a decision simply because other jurors think it's right. *It is important that you attempt to reach a unanimous verdict*. But of course, only if each of you can do so after having made your own decision. Do not change an honest belief on the weight and effect of the evidence simply to reach a verdict. In other words, do not change your opinion solely for the sake of reaching a unanimous verdict.
>
> All right.

> Mr. Foreperson, *I'm going to ask that y'all continue your deliberations*. And I thank you for your service. You may retire to your jury deliberation room.

R. 903, ln. 22–R. 904, ln. 25 (emphasis added). The jury was then sent back at 8:14 pm to continue deliberations. R. 905, ln. 1.

The second time the jury returned without reaching a verdict was at 10:33 pm. The jury sent another note again indicating they were stuck and no movement occurred:

> *All jurors are stuck in their opinions*, without a final answer or vote. *No change has happened in 3 hours. There is no productive things going on*. Is there a certain time we are able to leave or is there a way we could come back at the next business day to further our deliberation? Again, there hasn't been any change within the 3 hours.

R. 905, ll. 8-19; R. 955 (emphasis added). In response, the Trial Court dismissed the jury for the weekend with instructions to reconvene on Monday, July 3rd at 9:00 am. R. 909, ln. 6–R. 910, ln. 16. That Monday, The Court then brought in the jury at 9:16 am, and instructed them to continue deliberations as follows:

> Good morning, ladies and gentlemen. Thank you for being here today promptly on time. I do appreciate that.
>
> After we left Friday, *I received the jury note about—that y'all are stuck*. So I'm going to read you what's called an Allen charge at this point.
>
> Ladies and gentlemen of the jury, when any matter is in dispute, it is not always easy for even two people to agree. Therefore, I understand when 12 people must agree, it becomes much more difficult. *It is important that you attempt to end this case without a single one of you doing violence to your conscience.* It is your duty as jurors to consult with one another and to deliberate with a view towards reaching an agreement if you can do so without violence to your individual judgment.
>
> Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberation, do not

hesitate to reexamine your own views and change your opinion if convinced that your opinion is erroneous.

No juror is expected to give up his or her opinion based on reasoning satisfactory to yourself merely for the purpose of being in agreement. And I want you to understand that. And do not surrender your honest convictions as to the weight or the effect of the evidence solely because the opinion of your fellow jurors is contrary to your opinion for the mere purpose of returning a verdict.

It has never been intended that the verdict of the jury should be the verdict of any one person. On the other hand, the verdict of the jury is the collective reasoning of all persons put together. The reason we have a jury is so that we might have the benefit of the collective thought and collective reasoning of the jury. It may help to tell the other jurors how you feel about the case and why you think as you do. And I'm sure that you have been doing that already.

On the other hand, it may help if the other jurors exchange views with you. And I ask that you listen to each other, and give the—to the others' thoughts such meaning as you think they should have.

I'm now going to ask you to again retire to the jury room for further deliberations, and see if you can reach a verdict in this case. And let me close by reminding you again that while *it is important that you attempt to come to a decision*, you should do so without any juror doing violence to his or her own conscience. No juror is expected to give up an opinion based on reasoning satisfactory to himself or herself merely for the purpose of being in agreement.

And ladies and gentlemen, *I want to reiterate, too, as I told you in the jury instructions, during your jury deliberation, you will deliberate* respectfully of every single other juror. As I just stated, *you will listen* courteously and respectfully. *That is an order of this Court.* You have an oath to deliberate with respect for every single juror.

Ladies and gentlemen, also if it gets towards lunchtime, it takes us about an hour to order lunch. So if you're getting towards that time, let us know, and it take about an hour ahead of time. *I'm gonna let you, again, retire to your jury deliberation room and continue your deliberations*. Thank you.

R. 922, ln. 7–R. 925, ln. 5 (emphasis added). The jury was sent out of the courtroom at 9:20 am to once again deliberate. R. 925, ln. 6.

While the two instructions given by the Trial Court in response to the jury's deadlocked status were not identical, they both nonetheless emphasized the importance of attempting to reach a unanimous verdict, and exhorted them to continue deliberations—regardless of whether the Court chose to call them encouragements, "reconfirming" instructions to deliberate, or Allen charges.[5] Moreover, the Court failed to "inquire as to whether more deliberations would be beneficial to the jury" either before or after ordering it to continue deliberations for the second time. Robinson, 360 S.C. 187, 193–94, 600 S.E.2d 100, 103. Thus, even if the second note contained additional verbiage about the possibility of returning on the next business day, the Trial Court still failed to make the statutorily required inquiry prior to sending the jury back out for deliberations after it informed the Court it was still deadlocked a second time. S.C. Code Ann § 14-7-1330 (West, Westlaw current through 2024 Act No. 225) ("it shall not be sent out again without its own consent unless it shall ask from the court some further explanation of the law."). As such, the Trial Court erred.

Additionally, trial courts must exercise care in the specific words chosen when encouraging juries to continue deliberations. For example, the South Carolina Supreme Court "has cautioned that even language such as instructing the jury it should continue to deliberate 'with the hope that you can arrive at a verdict' is problematic." State v. Rampey, 438 S.C. 519, 526, 885 S.E.2d 366, 369 (2022). The rationale behind the need for such caution was recently explained by this Court in State v. Taylor:

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[5] As famously observed centuries ago: "What's in a name? That which we call a rose,
By any other name would smell as sweet." William Shakespeare, *Romeo and Juliet* act 2, sc 2, ll. 46-47.

> It is precisely because jurors scrutinize the trial judge's statements and instructions—a scrutiny that becomes more acute amidst heated deliberations—that the trial judge should couch them in as neutral and dispassionate terms as language and context permit. *Even an otherwise benign remark, such as "you should come to a decision," could be interpreted by a rational juror that the trial judge believes the result is obvious, or at least capable of unanimous agreement*.

Taylor, 427 S.C. 208, 216, 829 S.E.2d 723, 727–28 (Ct. App. 2019) (emphasis added) (citing Quercia v. United States, 289 U.S. 466, 470, 53 S.Ct. 698, 77 L.Ed. 1321 (1933) ("The influence of the trial judge on the jury 'is necessarily and properly of great weight' and 'his lightest word or intimation is received with deference, and may prove controlling.'")).

Coercive instructions to the jury pursuant to an Allen charge violate constitutional rights of fundamental due process. See, e.g., Tucker v. Catoe, 346 S.C. 483, 494, 552 S.E.2d 712, 718 (2001) ("We hold that the Allen charge given in this case violated petitioner's due process rights."). "Whether an Allen charge is unconstitutionally coercive must be judged 'in its context and under all the circumstances.'" Id. 346 S.C. at 491, 552 S.E.2d at 716 (quoting Lowenfield v. Phelps, 484 U.S. 231, 108 S.Ct. 546, 98 L.Ed.2d 568 (1988)). Pursuant to Tucker, four factors are examined to determine whether an Allen charge is unconstitutionally coercive:

> (1) Does the charge speak specifically to the minority juror(s)?
>
> (2) Does the charge include any language such as "You have got to reach a decision in this case"?
>
> (3) Is there an inquiry into the jury's numerical division, which is generally coercive?
>
> (4) Does the time between when the charge was given, and when the jury returned a verdict, demonstrate coercion?

Workman v. State, 412 S.C. 128, 130–31, 771 S.E.2d 636, 638 (2015).

In the case at bar, the Trial Court's repeated instructions to the jury to continue its deliberations and come to a verdict violated Appellant's due process rights. First, although the Court included cautions against compromising their own consciences, it also included admonition regarding the strength of collective thought. For example, the first instruction included the following clause:

> Each of you must decide the case for yourselves. But *you should do so only after you have impartially considered all of the elements, discussed it fully with other jurors, and listen—listen to the views of your fellow jurors*.

R. 903, ln. 22–R. 904, ln. 25 (emphasis added). The second charge included the following:

> On the other hand, *the verdict of the jury is the collective reasoning of all persons put together. The reason we have a jury is so that we might have the benefit of the collective thought and collective reasoning of the jury*. It may help to tell the other jurors how you feel about the case and why you think as you do. And I'm sure that you have been doing that already.
>
> . . . . .
>
> As I just stated, *you will listen* courteously and respectfully. *That is an order of this Court*.

R. 922, ln. 7–R. 925, ln. 5 (emphasis added). Further, both of the instructions included statements about the need for a unanimous verdict if possible. Such language necessarily speaks to holdouts in the minority of a jury, and utilizes the judge's position to do so.

The second Tucker factor reveals the presence coercion as well. The Trial Courts instructions included language pushing the jury to reach a result. For example, in its first instruction, the Trial Court told the jury, "It is important that you attempt to reach a unanimous verdict." In its second instruction, the Court made the following statements: "It is important that you attempt to end this case without a single one of you doing violence to your conscience;" "I'm now going to ask you to again retire to the jury room for further deliberations, and see if

you can reach a verdict in this case. And let me close by reminding you again that while it is important that you attempt to come to a decision, you should do so without any juror doing violence to his or her own conscience;" and "As I just stated, you will listen courteously and respectfully. That is an order of this Court." In so doing, the Trial Court impressed upon the jury the importance it held in ending the case by reaching a unanimous verdict, and ordered them to listen to each other. Thus, the second factor shows coercion.

The third factor likewise reveals coercion of the jury in Appellant's case. The Trial Court was well aware of the numerical division in deliberations: the first jury note stated it was "9-3 Guilty." R. 954 (emphasis in original); and the second note stated "All jurors are stuck in their opinions, without a final answer or vote. No change has happened in 3 hours." R. 954. Furthermore, the Trial Court was aware the deadlock on the jury was causing loud and emotional stress on jurors. R. 916, ln. 19–R. 917, ln. 8; R. 919, ln. 25—921, ln. 15. Trial Counsel placed on the record that shouting could be heard from the jury room on Friday night, and at least two jurors were teary and red-faced when returning to the courtroom that night. Additionally, at least one juror—Juror #285—was frustrated enough regarding the divisions that she purportedly spoke to others about it, and at least one of those men were discussing it loudly by the pool at the local country club over the intervening weekend. R. 917, ln. 9—R. 919, ln. 4; R. 925, ln. 10–R. 928, ln. 16. As such, the Trial Court was aware of the stress and emotional responses that further forced deliberations were causing, yet nonetheless continued to pressure the jury for a verdict knowing the split favored a finding of guilt. Thus, the third prong shows coercion as well.

Finally, the time between the coercive instructions and the verdict demonstrates coercion. As previously discussed, the jury was twice instructed to continue its deliberations in an effort to reach a verdict. Under such circumstances, a reasonable juror would likely believe that she was

not going to be released unless and until she acquiesced to the collective majority jury verdict. Additionally, the jury was ordered to begin deliberations after the second instruction at 9:20 am, and returned to the courtroom with its verdict at 11:22 am. R. 925, ln. 6; R. 930, ln. 20. The passage of two hours was not a lengthy period of time between the instruction and verdict, and demonstrates the instructions coercive effect.

Based upon the unique circumstances present, the Trial Court's two instructions to the jury when deadlocked violated her statutory rights under Section 14-7-1330 of the South Carolina Code, as well as her constitutional due process rights due to their coercive effect as demonstrated by the Tucker factors. Accordingly, Appellant's conviction should be reversed, and her case remanded for new trial.

III. The trial court reversibly erred by refusing to remove a juror and grant a mistrial where evidence was produced indicating Juror #285 spoke with non-jurors regarding the case and juror deliberations, where the Trial Court refused to even question Juror #285 about the matter, and where no alternate jurors remained.

"The granting or refusing of a motion for a mistrial lies within the sound discretion of the trial court whose ruling will not be disturbed on appeal in the absence of an abuse of discretion amounting to an error of law. State v. Wasson, 299 S.C. 508, 510, 386 S.E.2d 255, 256 (1989) (citing State v. Tuckness, 257 S.C. 295, 185 S.E.2d 607 (1971)). "Admittedly, the appropriate remedy for improper communication between jurors and outsiders is the declaration of a mistrial. Nevertheless, whether or not a mistrial should be declared is a matter resting within the trial court's sound discretion." State v. McDaniel, 275 S.C. 222, 224, 268 S.E.2d 585, 586 (1980) (citing State v. Wells, 114 S.C. 151, 103 S.E. 515 (1920)).

"Our federal and state constitutions guarantee a criminal defendant the right to a trial by an impartial jury." State v. Green, 427 S.C. 223, 235, 830 S.E.2d 711, 716 (Ct. App. 2019) (citing U.S. Const. amend. VI; and S.C. Const. art. I, §§ 3, 14). "The right can be infringed when a third party makes improper contact with the jury, for the right is meaningful only if the jury remains free from outside influence, including exposure to evidence or information that has not been introduced during the trial." Id. 427 S.C. at 235, 830 S.E.2d at 716 (citing Turner v. Louisiana, 379 U.S. 466, 471–72, 85 S.Ct. 546, 13 L.Ed.2d 424 (1965)).

"Great care should be exercised in all cases to protect the jurors from coming in contact with third parties, and especially is this true after the testimony is concluded, the jury charged and sent to the room for deliberation." State v. Emory, 178 S.C. 461, 183 S.E. 323, 325 (1936). "The general test for evaluating alleged juror misconduct is whether or not there in fact was misconduct and, if so, whether any harm resulted to the defendant as a consequence." State v. Bantan, 387 S.C. 412, 422, 692 S.E.2d 201, 206 (Ct. App. 2010) (citing State v. Zeigler, 364

S.C. 94, 108, 610 S.E.2d 859, 866 (Ct.App.2005)). However, as explained by this Court in State v. Green, "[i]n the event the trial court learns of an allegedly improper contact with a juror, the procedure of Remmer v. United States must be followed:

> In a criminal case, any private communication, contact, or tampering directly or indirectly, with a juror during a trial about the matter pending before the jury is, for obvious reasons, deemed presumptively prejudicial, if not made in pursuance of known rules of the court and the instructions and directions of the court made during the trial, with full knowledge of the parties. The presumption is not conclusive, but the burden rests heavily upon the Government to establish, after notice to and hearing of the defendant, that such contact with the juror was harmless to the defendant.

Id. 427 S.C. at 235, 830 S.E.2d at 717 (quoting Remmer v. United States, 347 U.S. 227, 229, 74 S.Ct. 450, 98 L.Ed. 654 (1954)). Furthermore, "[w]hen there is evidence of a substantive communication by a third party with a juror, the Remmer presumption applies, shifting the burden to the State to prove there is no reasonable possibility the improper communication influenced the verdict." Id. 427 S.C. at 236, 830 S.E.2d at 717 (citing United States v. Lawson, 677 F.3d 629, 642 (4th Cir. 2012)).

In the present case, the Trial Court was presented with evidence of allegedly improper third-party contact with a juror, but failed to question the juror. Specifically, Appellant moved for mistrial due to a juror discussing the case outside of deliberations over the weekend. Attorney Berry testified before the Court that she overheard two men loudly discussing the trial, as well as details of jurors and the jury split, while they were poolside at the Woodlands Golf and Country Club on Sunday. R. 917, ln. 9—R. 919, ln. 4; R. 925, ln. 10–R. 928, ln. 16. Further, Trial Counsel identified Juror #285 as the juror who previously spoke with the person discussing the case by the pool. R. 917, ll. 13—R. 918, ln. 18. "[F]or obvious reasons," this should have been "deemed presumptively prejudicial" because Juror #285's communications with outside

parties were "not made in pursuance of known rules of the court and the instructions and directions of the court made during the trial, with full knowledge of the parties." Green, 427 S.C. at 235, 830 S.E.2d at 717 (quoting Remmer v. United States, 347 U.S. 227, 229, 74 S.Ct. 450, 98 L.Ed. 654. Counsel moved for the juror to be removed as a remedy, and that a mistrial be granted due to the lack of any available alternate jurors at that time. R. 918, ll. 18-22. As such, the Trial Court was aware of an allegedly improper contact with Juror # 285.

Yet rather than follow the Remmer procedure, the Trial Court held as follows:

> At this point, it's "someone heard someone say something." As your renewed motions, those are denied as previously stated.
>
> As the Juror 285, I don't think that rises to the level to violate her oath at this point. If we get more information, we'll talk to Ms. Berry about all these people that were allegedly at this pool saying all these things. Until this point, I believe that motion it does not rise to a violation of the oath. Your motion is denied.

R. 919, ll. 8-17. Trial Counsel specifically requested that the Court bring in Juror #285 for questioning, but that request was cut short by the Trial Court, and denied as follows: "Again, as of this point, I don't believe it rises to that level. So we're gonna bring him in. We're gonna read them the Allen charge." R. 919, ll. 18-24. After ordering the jury to continue deliberations, the Trial Court heard Attorney Berry's testimony. However, the Trial Court still did not bring out Juror #285 for questioning regarding discussions about the case outside of deliberations.

Ultimately, the Court denied the mistrial motion on the record immediately before the verdict was read, ruling as follows:

> Before we bring the jury back, as to your motion for a mistrial, I'm going to deny it at this point. I've heard the testimony from Ms. Berry in conjunction with the oath and the instructions. And I believe it does not rise to that level. So your motion is noted for the record but denied.

R. 930, ll. 6-12. In other words, the Trial Court refused to hear testimony of the one person fromwhom it mattered most—Juror #285. Instead, the Court insinuated it heard sufficient evidence to resolve the matter based upon Attorney Berry's testimony, and the strength of the jury's oath as well as his own instructions to insulate Juror #285.

Yet such a ruling flies in the face of the evidence before it, as well as the law governing the matter. Once Attorney Berry provided her testimony readily indicating Juror #285 had communications regarding the case outside of deliberations, it was "presumptively prejudicial." Id. Further, at no point did the Trial Court require the State "to prove there is no reasonable possibility the improper communication influenced the verdict." Id. 427 S.C. at 236, 830 S.E.2d at 717 (citing United States v. Lawson, 677 F.3d 629, 642 (4th Cir. 2012)). Accordingly, the Trial Court erred as a matter of law.

Moreover, Appellant was prejudiced by the Trial Court's error as well. Based upon Green and Remmer, prejudice was presumed because evidence was presented of an allegedly improper contact with a juror. Additionally, the presumption of prejudice was never rebutted by the government with any evidence whatsoever because Juror #285 was never brought out into court for questioning. Therefore, stain of the presumption of prejudice from Juror #285 remains. Accordingly, Appellant's conviction should be reversed, and her case remanded for new trial.

CONCLUSION

For the foregoing reasons, Appellant Jamira U. Davis respectfully requests reversal of her conviction, and a directed verdict of acquittal entered based upon Issue I. Alternatively, in the event this Honorable Court does not reverse her conviction on the basis of Issue I, then Appellant respectfully requests reversal of her conviction and remand for a new trial based upon Issues II and III.

Joanna K. Delany
Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of February, 2025.

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Feb 24 2025
SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant 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."

This 24th day of February, 2025.

Joanna K. Delany
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
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RECEIVED
Feb 24 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Daniel McLeod Coble, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

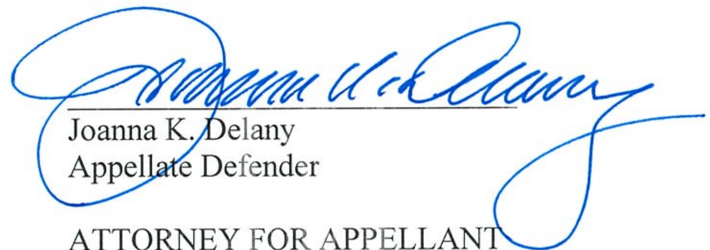
JAMIRA U. DAVIS,

APPELLANT

APPELLATE CASE NO. 2023-001215

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Appellant in the above-referenced case has been served upon R. Brandon Larrabee, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 24th day of February, 2025.



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ATTORNEY FOR APPELLANT

From:	Mcinnis, Sara
To:	Brandon Larrabee
Cc:	Donna D"Alessio; Delany, Joanna
Subject:	2023-001215 The State v. Jamira U. Davis Final Brief of Appellant
Date:	Monday, February 24, 2025 9:34:00 AM
Attachments:	2023-001215 The State v. Jamira U. Davis Final Brief of Appellant.pdf Bound Copies Cover Letter.pdf

Good Morning Mr. Larrabee,

Attached for service in the above-referenced case is the final brief of appellant, which will be filed with the Court of Appeals today, February 24, 2025, via email filing. I have also attached a copy of the cover letter that will accompany the bound copies of the record on appeal and final brief when they are delivered to the Court this afternoon.

Thank you,

Sara McInnis
Administrative Assistant
South Carolina Commission on Indigent Defense
Appellate Division
(803) 734-1330