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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
The Honorable Daniel McLeod Coble, Circuit Court Judge

THE STATE, RESPONDENT,

v.

JAMIRA U. DAVIS, APPELLANT.

Appellate Case No. 2023-001215

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

COUNTERSTATEMENT OF ISSUE ON APPEAL 1

STATEMENT OF THE CASE 3

STATEMENT OF FACTS 4

STANDARD OF REVIEW 15

ARGUMENT

I. The trial court correctly denied Appellant's motion for directed verdict, given that there was evidence in the record from which the juror could conclude beyond a reasonable doubt that Appellant murdered the victim and did not act in self-defense 16

II. The trial court's *Allen* charge was not coercive because the court gave an even-handed admonishment to jurors to consider each other's opinion, and because the jury signaled that it would consent to further deliberations 21

III. The trial court appropriately refused to call a mistrial because there was no evidence that Appellant was prejudiced by a juror's alleged comments to third parties. 26

CONCLUSION 29

PROOF OF SERVICE

TABLE OF AUTHORITIES

Page(s)

Cases

Allen v. United States,
164 U.S. 492, 17 S. Ct. 154, 41 L. Ed. 528 (1896) .... passim
In re Tracy B.,
391 S.C. 51, 704 S.E.2d 71 (Ct. App. 2010) 18
Remmer v. United States,
347 U.S. 227, 74 S. Ct. 450, 98 L. Ed. 654 (1954) 27, 28
Tucker v. Catoe,
346 S.C. 483, 552 S.E.2d 712 (2001) 21, 22, 23, 24
State v. Cooper,
334 S.C. 540, 514 S.E.2d 584 (1999) 26
State v. Bantan,
387 S.C. 412, 692 S.E.2d 201 (Ct. App. 2010) 15
State v. Bixby,
388 S.C. 528, 698 S.E.2d 572 (2010) 18
State v. Butler,
407 S.C. 376, 755 S.E.2d 457 (2014) 17, 18, 19, 20
State v. Dickey,
394 S.C. 491, 716 S.E.2d 97 (2011) 7, 16, 17
State v. Elgin,
398 S.C. 39, 726 S.E.2d 231 (Ct. App. 2012) 26
State v. Green,
427 S.C. 223, 830 S.E.2d 711 (Ct. App. 2019) 27
State v. Green,
432 S.C. 97, 851 S.E.2d 440 (2020) 27
State v. Guderyon,
438 S.C. 476, 884 S.E.2d 202 (Ct. App. 2022) 20
State v. Oates,
421 S.C. 1, 803 S.E.2d 911 (Ct. App. 2017) 17
State v. Pauling,
322 S.C. 95, 470 S.E.2d 106 (1996) 21
State v. Rampey,
438 S.C. 519, 885 S.E.2d 366 (2022) 15, 21, 23. 24, 25
State v. Robinson,
360 S.C. 187, 600 S.E.2d 100 (Ct. App. 2004) 15
State v. Taylor,
427 S.C. 208, 829 S.E.2d 723 (Ct. App. 2014) 23, 24
State v. Weston,
367 S.C. 279, 625 S.E.2d 641 (1998) 18
State v. Wiggins,
330 S.C. 538, 500 S.E.2d 489 (1998) 17

State v. Williams,
400 S.C. 308, 733 S.E.2d 605 (Ct. App. 2012) 18
Workman v. State,
412 S.C. 128, 771 S.E.2d 636 (2015) 21

Statutes

S.C. Code Ann. § 14-7-1330 (West) 10, 21, 25

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 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?

COUNTERSTATEMENT OF ISSUES ON APPEAL

I.

Whether the trial court properly found that the State produced substantial circumstantial evidence from which the jury could determine Appellant's guilt when the State showed that Appellant destroyed relevant communications with the Victim and where her self-defense narrative was inconsistent and contradicted other evidence.

II.

Whether the trial court properly addressed an Allen charge to the jury when the charge was even-handed and included some of the "hallmark" language of an Allen charge.

III.

Whether the trial court properly declined to grant a mistrial when there were no indications that any juror was influenced by one juror's alleged disclosure of the details of deliberations to an apparent family member.

STATEMENT OF THE CASE

Respondent accepts Appellant's statement of the case for the purposes of this appeal.

STATEMENT OF FACTS

In the early morning hours of January 22, 2021, the City of Columbia Fire Department responded to a house fire in Hopkins.[1] (R. p. 113, l. 16–p. 114, l. 23). Based on a quick survey of the building, a firefighter determined it was "100 percent involved." (R. p. 115, ll. 16–23). After the fire was extinguished, firefighters found a body, which they turned over to the coroner's office. (R. p. 121, ll. 16–23). The body had been found in the kitchen. (R. p. 131, ll. 10–18; p. 133, ll. 17–25).

Investigators would soon discover that fire was not the reason for the victim's demise. According to Robert Hook, a retired investigator with the Richland County Sheriff's Department, the autopsy turned up gunshot wounds to the body of the victim, Brandon Burch. (R. p. 183, ll. 17–24; p. 185, ll. 13–20). Investigators now realized they were dealing with a possible homicide. (R. p. 186, ll. 1–4).[2]

The autopsy revealed multiple gunshot wounds. For example, Victim was shot in the left back with a bullet that had an upward trajectory and was moving from left to right. (R. p. 477, l. 16–p. 478, l. 9). The bullet then lodged in his arm. (R. p. 478, l. 23–p. 479, l. 7). Another shot entered the left upper back and hit his spine. (R. p. 480, ll. 7–25). It also traveled left to right and upward. *Id.* A third bullet hit the left back of his head and traveled through the brain, again on a left-right, upward trajectory. (R. p. 481, ll. 8–16). Victim was also likely shot in the left leg, based on a fracture in his femur. (R. p. 482, ll. 1–9). The shot in the leg would have inhibited his

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[1] According to a firefighter who testified at trial, "the City of Columbia and Richland County are a codependent fire department," leading to Columbia's fire department being called to fires outside the city proper. (R. p. 113, l. 22–p. 114, l. 6).

[2] Both Appellant and the State conceded below that the fire was not set either intentionally or unintentionally by Jamira Davis, but was likely an accident following Victim's death.

movement, according to a forensic pathologist; the bullets in his brain and spinal cord would have caused him to drop to the ground instantly. (R. p. 485, ll. 8–20). Tests on his blood and eyeball fluid indicated his blood-alcohol level was somewhere around 0.24. (R. p. 487, ll. 1–10). During cross-examination, the pathologist said the shooter was either positioned lower than Victim, or that Victim was bending in some way. (R. p. 496, ll. 18–25).[3]

Investigators also reviewed surveillance video from a nearby home owned by Victim's sister. (R. p. 231, l. 9–p. 232, l. 10; p. 243, l. 24–p. 44, l. 21). Examining the video, they saw what they believed to be a muzzle flash shortly before 4 a.m. (R. p. 244, ll. 11–21).

On February 1, investigators interviewed Appellant. (R. p. 189, ll. 14–17). She had exchanged some of the last known communications with Victim. (R. p. 197, ll. 2–8; R. p. 243, ll. 6–23). Appellant had deleted some of her phone calls and text messages, and initially told officers the deletions were the result of an automatic feature on her cell phone. (R. p. 215, ll. 2–11). Investigators would discover that Appellant had deleted seven phone calls and 11 text messages from her phone in the time surrounding the Victim's death. (R. p. 434, l. 5–p. 435, l. 1). During her interview, Appellant recalled instances of domestic violence between Victim and her mother, who were in an intermittent relationship. (R. p. 227, ll. 4–11; p. 253, ll. 9–11). However, she said she viewed him as a father figure. (R. p. 253, ll. 5–7).

Appellant first told investigators that on the day before Victim's death, she and her girlfriend had gone to the funeral of one of her girlfriend's grandparents. (R. p. 254, ll. 22–25). They then returned home. *Id.* Appellant initially said that by the time of Victim's death, she had not seen him in around a week. (R. p. 255, ll. 2–6).

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[3] Appellant is apparently taller than Victim. (R. p. 658, ll. 14–17).

Appellant then told police that she had called Victim in the hours before his death. (R. p. 256, ll. 2–10). Then she said she had gone to Victim's house with her friend Ishmael, but stayed outside. (R. p. 256, l. 16–p. 257, l. 2). The purpose of the trip was to get marijuana. (R. p. 258, ll. 10–13). In a subsequent version, Appellant went alone and smoked marijuana with Victim. (R. p. 258, ll. 23–25; p. 260, ll. 23–24).

Eventually, Appellant admitted to killing Victim in self-defense. According to Appellant, Victim had attempted to sexually assault her by placing his hands between her legs. (R. p. 267, ll. 7–16).[4] She went to leave, but Victim grabbed her from behind and told her he wanted to talk to her. (R. p. 267, ll. 15–20). Appellant then fell on or near a large Ottoman in the room, grabbed a gun resting on the Ottoman, and shot Victim. (R. p. 268, l. 10–p. 270, l. 5).[5] Appellant said she left the gun at Victim's house. (R. p. 314, ll. 17–19). However, the week before the trial, one of Appellant's attorneys contacted investigators and said the attorney had a gun that was relevant to the investigation; police retrieved it. (R. p. 315, ll. 6–18). The attorney would not tell investigators where the gun came from, saying the information was privileged. (R. p. 321, ll. 15–24).[6] Investigators also found an Instagram exchange that they interpreted as an attempt by Appellant to sell the gun to someone named "Jaquan." (R. p. 428, l. 18–p. 429, l. 2).

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[4] Investigators had already asked Appellant multiple times whether "it was possible" that Victim had tried to initiate some form of sexual interaction with Appellant. (R. p. 403, l. 18–p. 404, l. 1; p. 409, ll. 11–17).

[5] Appellant also told police that she then went to Ishmael Scott's house. She later conceded that was not true. (R. p. 272, ll. 16–21).

[6] During the defendant's case in chief, several individuals testified about the gun, including Robert Benfield, who in addition to being the Director of Insurance for the South Carolina Association of Counties, also goes on dives for missing items. (R. p. 623, ll. 2–22). Upon a request by phone, Benfield recovered the gun from Mirror Lake the Friday before the trial. (R. p. 624, ll. 8–17; p. 628, l. 12–p. 629, l. 2).

After the State rested its case, Appellant moved for a directed verdict. (R. p. 516, ll. 9–18). Counsel argued that the trial court should consider *State v. Dickey*[7] and weigh what the defense said was uncontroverted evidence that Appellant acted in self-defense. (R. p. 517, l. 9–p. 518, l. 3; p. 520, ll. 11–16). The State countered that some of the evidence indicated Appellant's explanations of the killing were questionable; for example, while the struggle with Victim happened in the front room of the small house, Victim—who was likely immobilized in the shooting—was found in the kitchen behind that room. (R. p. 523, l. 12–p. 524, l. 1).

The trial court denied the motion for a directed verdict, saying:

> But as to the story about evidence from the state to rebut that, I believe they have shown a lot of evidence about inconsistencies, as well as the testimony from [the pathologist] about, according to the theory of rapid fire succession, that it would have dropped the decedent right there. . . .
>
> Now, it could have been moved from the fire, from fire hoses. That's for the jury to decide. So I believe there -- I believe, the state has offered evidence to rebut that. And so I believe that it should go to the jury at this point.

(R. p. 528, l. 14–p. 529, l. 9).

Appellant testified in her own defense. She conceded that she killed Victim, saying she was afraid he was going to rape her. (R. p. 674, ll. 19–25). Appellant testified that, after taking her girlfriend to the funeral in Hartsville, she planned to go to Victim's house to get marijuana. (R. p. 697, ll. 5–12; p. 698, ll. 3–9). On the way, Appellant said she stopped at Ishmael's house and smoked marijuana with him in her car. (R. p. 699, ll. 6–19).

During her visit with Victim, Appellant said, Victim eventually changed seats to be move closer to her. (R. p. 704, ll. 2–4). He then touched the part of her pants that covered her genitals.

[7] Discussed *infra*.

(R. p. 704, ll. 10–11; p. 738, l. 18–p. 739, l. 3). She testified that she attempted to leave, but Victim pulled her back from the door, and she fell next to the Ottoman on her hands and knees. (R. p. 704, l. 18–24; p. 705, ll. 8–9, l. 23–25; p. 706, ll. 2–4). She grabbed the gun and placed it under her arm. (R. p. 708, ll. 14–18).[8] Appellant further testified that the Victim was by now close to the kitchen and was pulling on her and "pushing me towards the bedroom door." (R. p. 710, ll. 11–23). Once Appellant started shooting, she said she could feel Victim getting off of her. (R. p. 711, ll. 17–25). She then left the house. (R. p. 712, l. 5–7).

Appellant conceded that she at first considered selling the gun used to shoot Victim to a friend, but ultimately did not follow through. (R. p. 713, ll. 14–25). Additionally, Appellant said she did not tell her attorneys about the gun until the Wednesday before the trial. (R. p. 714, l. 24–p. 715, l. 4). She said that she deleted her text messages because she was "trying to remove myself from the situation." (R. p. 716, ll. 8–16). Similarly, Appellant said she initially lied to investigators "[t]o try to remove myself from the whole situation." (R. p. 717, ll. 4–25). The State then cross-examined Appellant about her version of events.

After the defense rested, Appellant again moved for a directed verdict. (R. p. 784, l. 25; p. 785, ll. 12–17). Appellant argued that the evidence showed that there was no jury issue. (R. p. 785, l. 18–p. 786, l. 14). The State responded that Appellant contradicted herself during her testimony, and her demonstration of the shooting was "completely at odds with the physical evidence, completely at odds with the wounds on the body, completely at odds with where the defendant was discovered in the home." (R. p. 786, ll. 22–p. 787, l. 3). The trial court denied the motion, saying: "In the light most favorable to non-moving party, I believe that there -- evidence

[8] Much of Appellant's testimony on both direct and cross examination featured demonstrations that are not completely explained in the record.

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. p. 787, ll. 8–16).

The jury began its deliberations on June 30, 2023at 4:37 p.m. (R. p. 896, l. 6).

After about three and a half hours of deliberation, the jury sent a note to the court that the judge summarized for counsel. (R. p. 902, ll. 4–8, ll. 14–16). "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."[9] (R. p. 902, ll. 4–8). The State suggested the trial court first encourage the jury to deliberate, then give an *Allen* charge if they remained stuck. (R. p. 902, ll. 10–18). Appellant's counsel said "I mean, it's really up to Your Honor. All we mostly care about is the language of the *Allen* charge." (R. p. 902, ll. 19–21).

The jury returned to the courtroom at 8:12 p.m. (R. p. 903, l. 18). The judge then made these remarks to the jury:

> .... 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 deliberations.
>
> Each of you must decide the case for yourselves. But you should do so only after you have impartially considered all of the elements [*sic*], 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 to 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

[9] Named for *Allen v. United States*, 164 U.S. 492, 17 S. Ct. 154, 41 L.Ed. 528 (1896).

> reach a verdict. In other words, do not change your opinion solely for the sake of reach a unanimous verdict.[10]
>
> 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. p. 903, l. 22–p. 904, l. 25). The jury left the courtroom at 8:14 p.m. (R. p. 905, l. 1).

A couple of hours later, the jury sent two more notes to the court. After saying that one note was a request for food, the trial court read the other to the courtroom:

> All jurors are stuck in their opinions without a final answer for vote. No changes happened in three hours. There's no productive things going on. Is there a certain time we're able to leave? Or is there way -- 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 three hours.

(R. p. 905, ll. 10–19). Appellant argued that the judge's renewed deliberation instruction to the jury was "substantially what an *Allen* charge would be." (R. p. 906, ll. 1–3). Appellant encouraged the court to find that the jury was hung. (R. p. 906, ll. 19–20). The State indicated that it would support giving an *Allen* charge, and that the jury should know about the consequences of a mistrial. (R. p. 906, l. 23–p. 907, l. 13). Appellant's counsel then said that the jury could not be sent back a second time because of restrictions found in Section 14-7-1330 of the South Carolina Code.[11] (R. p. 907, ll. 14–18).

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[10] The second and third paragraphs reproduced here are substantially the same as a portion of the charge the trial court originally gave the jury. (R. p. 891, l. 14–p. 892, l. 4).

[11] The Code section in question is not a flat prohibition. It states:

> 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

The court found its earlier reiteration of its instruction did not amount to an *Allen* charge. (R. p. 909, ll. 1–3). The court continued: "So at this point, whether I give an *Allen* charge or not, I'm going to go with their instructions. They request to come back the next business day. I'm gonna go ahead and send them home and have them come back Monday morning at 9 a.m., continue their deliberations." (R. p. 909, ll. 3–9). The jury was dismissed for the evening at 10:34 p.m. (R. p. 910, l. 17).

When court resumed the following Monday, Appellant asked to supplement her motion for a mistrial. (R. p. 916, ll. 8–11). Appellant argued that some of the jurors had appeared emotional during the previous deliberations. (R. p. 916, l. 19–p. 917, l. 8). Counsel said that one of the jurors mouthed the words "Thank God" when the judge said they could return on Monday. (R. p. 917, ll. 1–4).

Counsel then told the court that another attorney had overheard a conversation at a public pool concerning the deliberations. (R. p. 917, ll. 9–18). Counsel said the man appeared to have gotten his information from Juror No. 285. *Id.* Counsel argued this was clear evidence that Juror No. 285 had "violated her oath." (R. p. 918, ll. 10–11). Appellant renewed her motion for a mistrial. (R. p. 918, l. 23–p. 919, l. 4).

The court held that, based on the information it currently had, "I don't think that rises to the level to violate her oath at this point." The court denied the motion for a mistrial. (R. p. 919, ll. 11–17).

> 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.

S.C. Code Ann. § 14-7-1330 (West).

Appellant also argued that the court's plan to give the jury an *Allen* charge on Monday amounted to a second *Allen* charge, which was "improper under law." (R. p. 920, ll. 3–18). The court said that would mean that its initial charge to the jury contained an *Allen* charge; Appellant responded that re-reading that portion of the jury charge was different than the initial reading because in the second case, the jury had sent a note indicating it was struggling to reach a verdict. (R. p. 920, l. 20–21; p. 920, ll. 22–24). The court denied the motion, finding that it had not yet given an *Allen* charge. (R. p. 921, ll. 17–22).

The court then brought the jury in to hear its *Allen* charge. (R. p. 922, ll. 2–9). During the *Allen* charge, the court said:

> 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 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 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.

(R. p. 922, l. 14–p. 924, l. 23). The jury then left the courtroom at 9:20 a.m. (R. p. 925, l. 6).

After a recess to allow the court to deal with other business, the court heard the testimony of Ashley Berry outside the presence of the jury. (R. p. 925, l. 15–p. 926, l. 7). Ms. Berry testified that she had overheard two men talking at the Woodlands Golf and Country Club. (R. p. 926, ll. 10–24). Ms. Berry said she heard one of the men say "jury" and "trial," and so she began listening more intently. (R. p. 927, ll. 2–3).

> .... And then I've overheard gentleman say, "Well, she said that she can't talk about the case. But I know -- but the defendant is 20." And then did not hear the rest of that. And then a little bit later, I heard him say, "Well, she can't -- she told me that she can't discuss the facts of the case." And then, I didn't hear something. And then he said, "The victim was shot." And then, I didn't hear the rest of it.
>
> Then he said, "She's really upset about it. Because it's a fairly straightforward case. But there are two people that just will not be reasonable. And they've told the rest of the jury that no matter what the discussions are, they're not going to change their opinion."

> Then there was some -- some more. And the two of them were talking about how it was 10 to 2. And I kept hearing them say 10 to 2 over and over again.
>
> And then the gentleman said one of the holdouts was a cop. And then he corrected himself and said, "Well, not, she's not actually a cop, but a correctional officer or something or," and then, I didn't hear the rest of what he said about that.

(R. p. 927, l. 3–p. 928, l. 1). Ms. Berry then said she thought she heard one of the men mention the woman's name and say she was his wife, but that she might have misheard that part of the conversation. (R. p. 928, ll. 2–11). The court later told Appellant that it would deny the motion for a mistrial, because it "believe[d] it does not rise to that level." (R. p. 930, ll. 6–12).

At 11:22 a.m., the jury returned to the courtroom. (R. p. 930, l. 20). The jury found Appellant guilty of murder. (R. p. 931, ll. 7–12).

Appellant renewed all mistrial motions and objected to the court not questioning Juror No. 285. (R. p. 935, l. 17–p. 936, l. 5). The court denied all the motions. (R. p. 936, ll. 13–14).

The court sentenced Appellant to 35 years' imprisonment. (R. p. 952, ll. 8–12). This appeal follows.

STANDARD OF REVIEW

As a general matter, "[i]n criminal cases, the appellate court sits to review errors of law only." *State v. Robinson*, 360 S.C. 187, 192, 600 S.E.2d 100, 102 (Ct. App. 2004).

Because the standard of review for the first claim is questioned by Appellant, it will be addressed further below. As to the Appellant's arguments for a mistrial, "[t]he decision to grant or deny a mistrial is within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of discretion amounting to an error of law." *State v. Bantan*, 387 S.C. 412, 417, 692 S.E.2d 201, 203 (Ct. App. 2010). South Carolina courts are hesitant to quickly declare a mistrial. "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." *Id.* At the same time, "an *Allen* charge, due to its potential for coercion, must be viewed with a more heightened scrutiny than a general jury charge." *State v. Rampey*, 438 S.C. 519, 524, 885 S.E.2d 366, 369 (2022).

ARGUMENT

I. The trial court correctly denied Appellant's motion for directed verdict, given that there was evidence in the record from which the juror could conclude beyond a reasonable doubt that Appellant murdered the victim and did not act in self-defense.

Appellant argues that the trial court potentially used the wrong standard in denying her motion for a directed verdict, and ruled incorrectly in any event. Both contentions are incorrect.

A. There is no confusion about the standard for granting directed verdicts.

As an initial matter, Appellant attempts to confuse the standard for the granting of a mistrial by plucking isolated language from *State v. Dickey*, 394 S.C. 491, 716 S.E.2d 97 (2011). However, as our courts have now made clear, the "standard" announced in *Dickey* did not alter how a court considers a motion for mistrial; the court is still looking for the existence of evidence, not its weight.

In *Dickey*, a security guard shot and killed one of two guests that the guard was removing from an apartment complex. *See id.* at 496–97, 716 S.E.2d at 99–100. Both the security guard and other guest, a friend of the deceased, testified that the deceased was moving toward the security guard and likely intended to do him harm when the security guard fired his weapon. *See id.*

The majority in *Dickey* noted some of the usual language about when a motion for directed verdict should be granted, then added the sentence that Appellant uses to argue that there is a higher standard for cases in which self-defense is invoked: "However, when a defendant claims self-defense, the State is required to disprove the elements of self-defense beyond a reasonable doubt. We find the State did not carry that burden." *Id.* at 499, 716 S.E.2d at 101 (citation omitted). *See also id.* at 502, 716 at 102 ("The State certainly did not rebut these elements of self-defense beyond a reasonable doubt, as the law requires."); *id.* at 503, 716 S.E.2d at 103 ("[W]e find the State failed to disprove the elements of self-defense beyond a reasonable doubt.").

But as both our supreme court and this Court have found, *Dickey* did not alter South Carolina's standard for a directed verdict on self-defense. Indeed, the *Dickey* court determined that as a matter of law—a phrase used at least four times in the majority opinion—the security guard acted in self-defense. *See id.* at 501, 716 S.E.2d at 102 (twice); *id.* at 502, 716 S.E.2d at 102; *id.* at 503, 716 S.E.2d at 103. In other words, the *Dickey* court found that a directed verdict was proper because no jury was needed—because the State's own theory of the case was essentially that the security guard acted in self-defense. *See id.* at 500, 716 S.E.2d at 102 ("Had [the security guard] accompanied the ejection with threatening words or posture, a jury question might have arisen.").

Three years later, our supreme court clarified its position in *State v. Butler*, 407 S.C. 376, 755 S.E.2d 457 (2014). There, the court rejected an attempt to frame *Dickey* as a change in the standard of review. *See id.* at 381–82, 755 S.E.2d at 460 ("In *Dickey*, the Court held that the defendant was entitled a directed verdict on the issue of self-defense because the *uncontroverted* facts established self-defense *as a matter of law*. Therefore, even viewing the facts in a light most favorable to the State, the Court found that the evidence established that the defendant acted in self-defense."). Likewise, in *State v. Oates*, this Court looked at both the *Dickey* and *Butler* decisions and "interpret[ed] *Butler* to stand for the proposition that our well-established directed verdict standard is not altered by a defendant's claim of self-defense." 421 S.C. 1, 19, 803 S.E.2d 911, 921 (Ct. App. 2017).

As a result, there is no confusion about the standard to be applied in this case. "When ruling on a motion for a directed verdict, the trial judge is concerned with the existence of evidence, not its weight." *Butler*, 407 S.C. at 381, 755 S.E.2d at 460 (cleaned up) (quoting *State v. Wiggins*, 330 S.C. 538, 544–45, 500 S.E.2d 489, 492–93 (1998)). "If there is any direct evidence or

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.* (quoting *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006)).

B. The trial court here correctly concluded that, based on the inconsistencies in Appellant's version of events and what the jury could interpret as the general implausibility of her story, there was sufficient for the jury to determine beyond a reasonable doubt that Appellant murdered Victim.

Appellant argues that under either standard, the trial court should have directed a verdict because the State did not sufficiently disprove self-defense. Under the appropriate standard, Appellant is incorrect.

> A person is justified in using deadly force in self-defense when:
>
> (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 reasonably 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.

State v. Williams, 400 S.C. 308, 314–15, 733 S.E.2d 605, 609 (Ct. App. 2012). If the State disproves any one of these elements beyond a reasonable doubt, the claim of self-defense is defeated. "It is an axiomatic principle of law that the defense has not been established if any one element is disproven." *Id.* at 315, 733 S.E.2d at 609 (quoting *State v. Bixby*, 388 S.C. 528, 554, 698 S.E.2d 572, 586 (2010) *see also* In re *Tracy B.*, 391 S.C. 51, 71, 704 S.E.2d 71, 81 (Ct. App.

2010) ("The State need only disprove one of the four elements of self-defense beyond a reasonable doubt.").

Again, *Butler* is instructive. There, our supreme court ruled that the State presented sufficient evidence to defeat a claim for self-defense when the defendant gave a story that was inconsistent and differed with the physical evidence in the case. *Butler*, 407 S.C. at 382, 755 S.E.2d at 460. The defendant in Butler claimed that the victim had savagely abused her by kicking her, choking her, and hitting her in the face with a DVD/VCR player. *Id.* at 378, 755 S.E.2d at 458. The defendant said she attempted to retaliate with a knife, at which point the victim grabbed her and began trying to gain control of the blade. *Id.* at 378, 755 S.E.2d at 458–59. According to the defendant, the victim said "I will kill you. I'm going to kill you." *Id.* at 379, 755 S.E.2d at 459. "When the victim let go and [the defendant] turned around, she saw him 'coming [ ] down onto the knife.'" *Id.* In her testimony and statements to police, the defendant gave a variety of stories claiming alternatively that the defendant fell on the knife, that he didn't fall on the knife, and that "the initial stab . . . [was] an accident." *Id.* (alteration in original). However, our supreme court reasoned that the defendant's "various, inconsistent accounts of how the stabbed occurred created credibility issues and questions of fact to be resolved by the jury," as did the fact that her injuries did not appear to support her testimony that she was struck in the head with her description of the abuse she allegedly suffered at the hands of the victim. *Id.* at 382, 755 SE.2d at 460.

Appellant's case is strikingly similar. Like the defendant in *Butler*, Appellant alleged that Victim abused her and she acted in self-defense. Further, Appellant gave several versions of various aspects of the shooting, the narrative of her evening around the fatal encounter, and what she did with the weapon—up until virtually the moment of trial. She struggled to explain the mechanics of how she managed to shoot Victim in the back and have his body end up where it was

later found. The jury was left to sort out which version of the Appellant's story they believed—and how much of it they believed. Her credibility issues created a jury issue. *See id.; see also State v. Guderyon*, 438 S.C. 476, 884 S.E.2d 202 (Ct. App. 2022) ("For purposes of the circuit court's analysis at the verdict stage, it does not matter which story the jury would later choose to believe.").

As a result, Appellant's attempt to parse out the prongs of our state's self-defense law is in vain. Which prong did the State present sufficient evidence to disprove at trial? The answer is "virtually all of them." The State's evidence was sufficient to convince the jury beyond a reasonable doubt that the defendant did not fear for her life; that the fear was not reasonable; and that she had no other probable means of defending herself—because her testimony about how all of those things occurred remained implausible and kept shifting. Just because the same evidence undermined the various bases of her self-defense theory does not mean that the State did not undermine the claim beyond a reasonable doubt.

The State presented sufficient evidence to show the jury that it should not believe Appellant's testimony about why she killed the victim. The trial court properly ruled that Appellant was not entitled to a directed verdict. This Court should affirm her conviction.

II. The trial court's *Allen* charge was not coercive because the court gave an even-handed admonishment to jurors to consider each other's opinion, and because the jury signaled that it would consent to further deliberations.

Appellant argues that the trial court's *Allen* charge was impermissibly coercive toward the jury and should not have been given under South Carolina law because it operated as a second *Allen* charge. However, the trial court gave an appropriate *Allen* charge, and there was no error even if it was a second *Allen* charge. Appellant is incorrect.

In evaluating whether an Allen charge is coercive, a court should consider four factors:

> (1) Does the charge speak specifically to the minority juror(s)?
>
> (2) Does the charge include 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?

State v. Rampey, 438 S.C. 519, 525, 885 S.E.2d 366, 369 (2022) (quoting *Workman v. State*, 412 S.C. 128, 131, 771 S.E.2d 636, 638 (2015)).[12] State law also specifies that if a jury, after having first indicated to a court that it is deadlocked, "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." S.C. Code Ann. § 14-7-1330 (West). However, a court's decision to give a second *Allen* charge is not an independent ground to automatically find the *Allen* charge coercive. *See State v. Pauling*, 322 S.C. 95, 99, 470 S.E.2d 106, 109 (1996) ("We further conclude that the mere giving of the second *Allen* charge was not per se coercive.").

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[12] These are sometimes referred to as the *Tucker* factors, given their origins for South Carolina purposes in *Tucker v. Catoe*, 346 S.C. 483, 487, 552 S.E.2d 712, 714 (2001).

First, the State does not concede that the *Allen* charge challenged by Appellant was a second *Allen* charge. The trial court considered its first comments to the jury to be answering the jury's question by referring back to its original instructions, a routine way of responding to juror questions in South Carolina. The court did encourage the jury to continue deliberating, but this response was not tantamount to an *Allen* charge.

However, if this Court is inclined to find that both of the judge's remarks to the jury were *Allen* charges, the second *Allen* charge was not unduly coercive on its own, nor was it a violation of the state's statutory restrictions on subsequent *Allen* charges.

As to the issue of coercion, the trial court in this case carefully constructed its *Allen* charge to avoid many of the pitfalls that other courts have encountered over the years. On balance, a review of the factors show that the *Allen* charge in this case was not impermissibly coercive.

First, the charge did not specifically speak to minority jurors. Appellant does not point to any authority indicating that the court's comments about the collective reasoning of juries is *per se* coercive toward minority jurors. Instead, properly used—as it was here—the charge is part of the balance that a trial court must strike in an *Allen* charge. It encourages jurors to stick to their guns if they must, but to consider the reasoning of the other jurors. It is true that our supreme court found coercive in *Tucker v. Catoe* a jury charge that included language instructing that "[i]t was never intended that the verdict of the jury should be the verdict of any one person." 346 S.C. 483, 487, 552 S.E.2d 712, 714 (2001). However, in that case, the court was aware that only one juror was preventing a guilty verdict. *Id.* at 493, 552 S.E.2d at 717. In contrast, the court here had reason to believe that as many as three and at least two jurors were holding out. The instruction was far less targeted here than in *Tucker*.

Additionally, the instruction did not have the urgency that generally indicates that the second *Tucker* factor has been violated. For example, in *Rampey*, our supreme court found the charge coercive when the judge implored the jury that the parties "deserv[ed] a verdict" and repeatedly invoked the resources that had been spent on the proceedings. *See Rampey*, 438 S.C. at 526–27, 885 S.E.2d at 369–70; *id.* at 527, 885 S.E.2d at 370 ("While it is permissible in an *Allen* charge to note the expense of a retrial, the trial court overemphasized this consideration here.").

Appellant's attempt to characterize the judge's remark "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 conscience" as a violation of the second standard inverts what our supreme court has called a "hallmark" of an appropriate *Allen* charge. *See id.* at 530, 885 S.E.2d at 371 (faulting the charge in that case for "fail[ing] to tell jurors not to surrender their conscientiously-held beliefs for the sake of a verdict" because "[t]his language is one of the hallmarks of a typical Allen charge"); *see also State v. Taylor*, 427 S.C. 208, 218, 829 S.E.2d 723, 729 (Ct. App. 2019) ("The most troubling thing about the charge here is what it did not say; it did not tell the jurors they should not surrender their conscientiously held beliefs simply for the sake of reaching a verdict, an essential message that sometimes saves borderline charges from crossing the line into coercion."). The trial court's statement earlier in the same passage that it would send the jury back and "see if you can reach a verdict in this case" is notably less insistent than the charge in *Rampey* that the trial court would "ask you to return to your jury room and attempt to come to a verdict." *See Rampey*, 438 S.C. at 526, 885 S.E.2d at 369. Here, the court was only telling the jury the purpose of deliberations—to determine whether a verdict could be reached—rather than expressing a preference over the outcome. *See State v. Taylor*, 427 S.C. 208, 213, 829 S.E.2d 723, 726 (Ct. App. 2019) ("In fact,

the trial judge has a duty to urge the jury—without pressuring or coercing them—to reach a verdict.").

Turning to the third *Tucker* factor—the court's knowledge of the numerical division of the jury—there is ample reason to believe that the court had at least some insight into the number of jurors aligned on either side of the case. But that is not on its own disqualifying. "It is not coercive to give an Allen charge simply because the jury volunteers how it is split, but the trial court's knowledge of the split is relevant." *Taylor*, 427 S.C. at 217, 829 S.E.2d at 728 (citation omitted). In those cases, courts should avoid an *Allen* charge that intimates the judge is familiar with the jury division and is directed at minority jurors. *See id.* at 216–17, 829 S.E.2d at 728. In this case, the court did not suggest that the jury split was of particular interest to it, did not use its knowledge of the jury split to intimidate minority jurors, and included the "hallmark" language that a juror should 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." *See id.* at 218, 829 S.E.2d at 729 (finding that such language is "an essential message that sometimes saves borderline charges from crossing the line into coercion").

As to the fourth *Tucker* factor, which is concerned with the time, the jury here deliberated for roughly two hours. Our courts have found this is a context-specific inquiry. *See Rampey*, 438 S.C. at 528, 885 S.E.2d at 370 ("To be sure, because the question before the Court is context specific, merely because there are cases finding an Allen charge unduly coercive where the jury deliberated for a longer period of time does not necessarily mean the timeframe here weighs in favor of Rampey."). Here, the question was simply whether the jurors chose to believe Appellant or not; two hours is enough time for the jurors to go back over the inconsistencies in her account and determine whether her credibility had been sufficiently damaged. *But see id.* at 528, 885

S.E.2d at 370–71 (finding that the time factor was in defendant's favor when the jury determined "a credibility contest" after an additional one hour and seventeen minutes of deliberations).

Summing up: the charge was not aimed at minority jurors; it did not include an undue emphasis on the importance of the jury reaching a verdict; and there was ample time for minority jurors to reconsider their opinions on Appellant's credibility. And while the court was aware of the alignment of the jurors—or at least what that alignment was at one point—it crafted a charge that minimized the possibility that either side of the division would feel "targeted" by the court. On balance, the factors lead to the conclusion that the driving concern regarding *Allen* charges—that the court impermissibly leans on one side of the panel—was not present here.

Finally, returning briefly to the statutory issue: The jury here consented to return. State law clearly carves out cases where the jury consents to additional deliberations from the restriction on sending the jury back to deliberation for a second time. *See* § 14-7-1330. The jury in the present case already indicated it was willing to return on the following business day to continue its discussions. There was no need for the judge to ask the jury if it consented. With the jury already signaling that it was prepared for further deliberations, the trial court correctly determined that consent under the statute had already been obtained.

For these reasons, there was no issue with the trial court's *Allen* charge. This Court should affirm Appellant's conviction.

III. The trial court appropriately refused to call a mistrial because there was no evidence that Appellant was prejudiced by a juror's alleged comments to third parties.

In her final attempt to identify an error by the trial court, Appellant argues that the court should have declared a mistrial because of allegations that a juror discussed the deliberations with a third party. Appellant's argument misconstrues the kind of misconduct our laws are meant to protect against; the trial court made no error.

Out of an abundance of caution, the State wishes to make clear that it does not condone or minimize the juror's alleged actions in disclosing details of the jury's deliberations to someone outside the jury. If the allegations are true, juror's actions constituted a grave and serious breach of the confidentiality in which our state's juries are cloaked. However, a mistrial should be declared not whenever juror misconduct occurs, but when misconduct impairs the defendant's right to a fair trial. *See State v. Cooper*, 334 S.C. 540, 551, 514 S.E.2d 584, 590 (1999) ("Unless the misconduct affects the jury's impartiality, it is not such misconduct as will affect the verdict."); *State v. Elgin*, 398 S.C. 39, 45, 726 S.E.2d 231, 234 (Ct. App. 2012) ("Jury misconduct that does not affect the jury's impartiality will not undermine the verdict.").

There is no indication here that the impartiality of the jury was endangered by the juror's misconduct. The evidence is that the juror simply recounted what was going on in jury deliberations, and that the affected juror was already inclined to find Appellant guilty. *See Elgin*, 398 S.C. at 46, 726 S.E.2d at 235 (finding when a juror's mother discussed the theory that the wrong person was being tried, there was no prejudice because, among other reasons, "the juror's decision that Elgin was guilty indicates her mother's statement did not influence her verdict").

Because Appellant cannot point to any way in which she was prejudiced by the misconduct, she instead faults the trial court for its procedure in addressing the error—because the court failed to ask the juror questions under oath—and then attempts to fall back on a presumption of prejudice

that does not apply. In doing do, Appellant relies heavily on this court's decision in *State v. Green*, 427 S.C. 223, 830 S.E.2d 711 (Ct. App. 2019), *aff'd as modified*, 432 S.C. 97, 851 S.E.2d 440 (2020). That reliance is misplaced.

First, the case here is distinct from the situation faced in *Green*. There, this Court weighed whether the bailiff's comment to a juror about the possibility of an *Allen* charge inappropriately influenced the jury. *Id.* at 229, 830 S.E.2d at 713. In that case, this Court held that courts should use the procedure outlined in *Remmer v. United States*[13] "[i]n the event the trial court learns of an allegedly improper contact with a juror[.]" *Id.* at 235, 830 S.E.2d at 717. Because *Remmer* is still considered good law in the Fourth Circuit, the court also found that there was a presumption of prejudice. *Id.* at 235–36, 830 S.E.2d at 717. However, in that case, the court was considering a third party's comments to the juror, not a juror's disclosure of the deliberations to a third party. Certainly, whenever additional information is potentially brought to a juror's attention, there are solid reasons for presuming that information could be prejudicial. But that presumption does not hold up for the juror communicating to a third party.

Second, this Court's holding in *Green* was modified by our supreme court. In its decision, the supreme court was cautious about the implications of widespread application of *Remmer*. *See State v. Green*, 432 S.C. 97, 100, 851 S.E.2d 440, 441 (2020) ("Our unwillingness to categorically apply the *Remmer* presumption of prejudice stems from our view that not every inappropriate comment by a bailiff to a juror rises to the level of constitutional error."). Specifically, our supreme court noted that *Remmer* dealt with an attempt to bribe a juror, "conduct which goes to the heart of the merits of the case on trial," as opposed to the procedural discussion the juror had with the bailiff in Green. *Id.*

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[13] 347 U.S. 227, 74 S. Ct. 450, 98 L.Ed. 654 (1954).

The error here was not, of course, discussion of a court procedure. But there is also no evidence that it affected the juror's views on the merits of the case. Therefore, the *Remmer* presumption should not apply; and even were it to apply, the evidence that the conversation was a one-way discussion from the juror to an outsider overcomes the presumption; it indicates that the juror was already leaning toward conviction before she allegedly spoke to a relative about the split. This Court should affirm Appellant's conviction.

CONCLUSION

Appellant was convicted presumably because the jury found her testimony not to be credible. The jury that did that was not improperly influenced by the trial court's *Allen* charge, and the juror misconduct does not provide a reason for undermining the verdict. Appellant's conviction should be affirmed.

Respectfully submitted,

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February 27, 2025

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
The Honorable Daniel McLeod Coble, Circuit Court Judge

THE STATE, RESPONDENT,

v.

JAMIRA U. DAVIS, APPELLANT.

Appellate Case No. 2023-001215

PROOF OF SERVICE

I, **R. Brandon Larrabee**, of counsel for the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Final Brief of Respondent has been forwarded to Appellant's counsel, Joanna K. Delany, Esq., via email today, February 27, 2025 to jdelany@sccid.sc.gov, and to her assistant at smcinnis@sccid.sc.gov.

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

This 27th day of February, 2025.

s/ R. Brandon Larrabee

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