RECEIVED
Mar 19 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Deadra L. Jefferson, Circuit Court Judge

Appellate Case No. 2023-000251

The State, ...Respondent,

v.

Akim Jammar Jean-Charles, ...Appellant.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Assistant Attorney General
S.C. Bar No. 8729
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit
O.T. Wallace Building
101 Meeting Street
Charleston, South Carolina 29401
(843) 958-1900

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Federal Cases:

State Cases:

State Statutes:

State Rules:

Supplemental Authorities:

RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

1. Whether Appellant's claim that the trial court erred in refusing to charge the jury with his requested definition of "threat" is unpreserved for appellate review where Appellant waived any previous objection by repeatedly declining to renew his objection during the charge conference? Furthermore, whether the trial court properly declined to instruct the jury with Appellant's requested definition of "threat" where the charge given was substantially correct and adequately covered the law applicable to the case such that a reasonable juror would have understood the charge? Finally, whether any possible error in the jury charge was entirely harmless where, beyond a reasonable doubt, it did not affect the jury's deliberations or contribute to the verdict?

STATEMENT OF THE CASE

Akim Jammar Jean-Charles (Appellant) was indicted at the August, 2018 term of the grand jury for Charleston County for threatening the life, person, or family of a public official. (2018-GS-10-04368). On February 6-8, 2023, Appellant proceeded to a trial by jury before the Honorable Deadra L. Jefferson. He appeared *pro se* with the assistance of standby counsel—assistant public defenders Nicholas D'Angelo and Douglas Henley of the Ninth Circuit Public Defender's Office. Respondent (the State) was represented by Assistant Solicitors Lemel Zeigler and Kelly Barber of the Ninth Circuit Solicitor's Office. At the conclusion of trial, the jury found Appellant guilty as indicted. He was sentenced by Judge Jefferson to four (4) years' imprisonment suspended upon the service of one hundred and nine (109) days' time-served and four (4) years' probation. (Indictment; Sentencing Sheet; Tr.p.722-p.724).[1]

Appellant timely filed a *pro se* notice of intent to appeal his conviction and sentence. By Order filed January 5, 2024, this Court dismissed the appeal due to Appellant's failure to complete and return an affidavit of indigency from Appellate Defense and his failure to make other arrangements for payment of the transcript; however, Appellant petitioned for rehearing and by Order filed March 21, 2024, the appeal was reinstated. A brief of appellant was subsequently submitted in support of the appeal by Appellate Defender Jessica M. Saxon of the South Carolina Office of Indigent Defense's Division of Appellate Defense. This Brief of Respondent now follows.

---

[1] Although not part of the matter designated for inclusion in the Record on Appeal in this matter, a records check with the Charleston County Clerk of Court reveals that on February 13, 2023, less than one week after being sentenced to probation in this matter, Appellant was charged with a probation violation for failing to follow the advice and instructions of his agent by refusing to complete his intake paperwork with his name and signature and instead writing: "Authorized Rep UCC1-308 All Rights Reserved." On July 25, 2023, Appellant appeared at a probation violation hearing before the Honorable Bentley Price which resulted in an Order: (1) partially revoking Appellant's suspended sentence and reinstating 180 days of the original sentence; (2) awarding Appellant 109 days of "*Hayes*" credit for the time-served portion of the split sentence; and (3) terminating the balance of Appellant's probation.

STATEMENT OF FACTS

As summarized by the solicitor during his opening statement, the single charge against Appellant stemmed from an incident that took place on September 5, 2017, when, while fulfilling her duties to protect the community as a law enforcement officer, Sergeant Rainey of the Charleston County Sheriff's Office (CCSO) came in contact with Appellant and Appellant threatened her safety. (Tr.p.428-p.429).

Pretrial Motions – Self-Representation

When the case was called for trial on Monday, February 6, 2023, Appellant was represented by Assistant Public Defender Nicholas D'Angelo; however, Mr. D'Angelo advised the court that Appellant wanted to relieve him as counsel and to represent himself instead. (Tr.p.6, lines 1-9). The solicitor then shared some procedural history in regard to the pending charge and Appellant's request to proceed *pro se*. He explained Appellant initially had a *Faretta*[2] hearing before the Honorable Benjamin H. Culbertson on January 16, 2020, which resulted in an Order finding Appellant was knowingly, voluntarily, and intelligently waiving his right to an attorney and wished to proceed *pro se*. The solicitor further explained that after several Covid-19 related delays and the issuance of a bench warrant due to Appellant's alleged failure to appear for a status conference, Mr. D'Angelo was appointed as Appellant's counsel in October of 2022. (Tr.p.7, line 5-p.8, line 21). Appellant disputed parts of this procedural history and then engaged the trial judge in a lengthy discussion about several issues/complaints he had about his case, including his having been appointed a public defender *after* Judge Culbertson had previously determined he could proceed *pro se*. The trial court ordered Mr. D'Angelo to continue representing Appellant until she could address what she determined was a new motion by Appellant to represent himself. Consequently, Appellant continued with representation

[2] *Faretta v. California*, 422 U.S. 806 (1975).

through his arraignment and jury selection for his trial. (Tr.p.38, line 24-p.87, line 9). After the jury was excused for a lunch recess, Appellant engaged in further discussions about dismissing Mr. D'Angelo and representing himself. (Tr.p.87-p.101; p.132-p.135; p.146-p.149; p.158-p.161).

Ultimately, the trial court conducted its own *Faretta* hearing, questioning Appellant extensively about his education, employment, prior interactions with the criminal justice system, prior instances of self-representation, mental health, drug and alcohol use, familiarity with the rules of criminal procedure and the rules of evidence, and his understanding of what it would mean to have Mr. D'Angelo as standby counsel. (Tr.p.168-p.209). The State took no position on Appellant's motion to proceed *pro se*. (Tr.p.214, lines 7-8).

The trial judge said she would think about the *Faretta* issue overnight, which would give Appellant an opportunity to retrieve all the evidence and documentation he wished to share with Mr. D'Angelo so it could all be reviewed by them together in the morning. She then reminded Appellant to be prepared to proceed either way, either by thoroughly briefing Mr. D'Angelo on his positions, or handling his defense *pro se*. (Tr.p.262-p.267). The trial court again noted it would rule on the *Faretta* issue the following morning and reminded Appellant to review the rules of procedure with Mr. D'Angelo, to be prepared, and to show up in the morning for trial or he would be tried in his absence. (Tr.p.275, lines 2-3; p.277, lines 1-17; p.282, line 6-p.290, line 6).

The following morning, the trial judge noted the only outstanding issue from the day before was to determine whether Appellant would be allowed to represent himself. Mr. D'Angelo described his trial preparation discussions with Appellant, Appellant's clear desire to relieve him as counsel, and two additional motions Appellant wished to pursue. (Tr.p.295, line

20-p.297, line 24). During the lengthy discussion that ensued, Mr. D'Angelo and the court both recognized the need for a ruling on the *Faretta* issue. (Tr.p.304, line 19-p.305, line5; p.383, lines 15-21; p.386, lines 2-3; p.406, line 23-p.409, line 23). The trial court then detailed the procedural history regarding Appellant's request and the matters that had been covered during the *Faretta* hearing the previous day. (Tr.p.410, line 21-p.414, line 24). The trial court ultimately granted Appellant's motion to proceed *pro se*. The judge allowed Appellant to represent himself but ordered Assistant Public Defenders D'Angelo and Doug Henley to remain as standby counsel to answer any procedural, evidentiary, or other questions Appellant may have during trial. (Tr.p.410-p.415).

Pretrial Motions – Definition of "Threat"

During the lengthy pretrial motions hearing, while responding to Appellant's various arguments, the solicitor noted he had previously submitted a "request to charge" to Judge McCoy's chambers. The trial judge asked that she be given a copy and that it be marked as a Court's exhibit, commenting she would have a *full charge conference later so both sides would know exactly what she was going to charge and could provide feedback.* (Tr.p.221). During a subsequent discussion regarding the videotaped recording of the alleged threats, Appellant argued that the South Carolina Jurisprudence civil definition of "threat" should control the jury's consideration of the crime. The trial judge noted that she would *later* look up how "threat" is defined in criminal law in South Carolina. Appellant advised he also would bring information about the definition of "threat" and would argue his point the following day. (Tr.p.257-p.259). Mr. D'Angelo later submitted written proposed jury instructions on behalf of Appellant, which included the following definition of "threat:"

> A threat is defined as, a communicated intent to inflict physical or other harm on any person or on property. A

> declaration of an intention to injure another or his property by some unlawful act. The term "threat" means an avowed present determination or intent to injure presently or in the future. The prosecution must establish a "true threat," which means a serious threat as distinguished from words uttered as mere political argument, idle talk or jest. Black's Law Dictionary, 5th Edition.

(Court's Exhibit #2). The trial court had the request marked as a Court's Exhibit and advised both parties the Clerk would keep it until the point at trial where it was applicable. (Tr.p.266, line 20-p.267, line 14). The written request includes the definition of "true threat" that was promoted by Appellant during the earlier discussion.

After ruling on several unrelated pretrial motions, the trial judge observed that the relevant criminal statute on threatening the life of a public official seemed like a strict liability statute, which would mean the victim would not necessarily have to believe the threat or perceive she was being threatened. Appellant challenged this notion and resumed arguing about the proper definition of "threat." The trial judge again noted she would research the appropriate definition overnight and would review whatever Appellant wanted to show her about the issue the following morning. (Tr.p.277-p.284).

The following day, while arguing for recusal of the trial judge, Appellant contended his due process and constitutional rights were being violated and the trial should not go forward until the definition of "threat" had been resolved. The trial judge disagreed and explained it would be resolved "at the *jury charge part of the trial*, not at the beginning." (Tr.p.302-p.304) (emphasis added).[3] Appellant continued to push this argument (among others) in seeking the judge's recusal. (Tr.p.329-p.330). Much later, after the court granted Appellant's motion to proceed *pro se*, he requested an opportunity to discuss the meaning of "threat." The trial judge reminded

[3] This ruling comports with the requirements set forth in Rule 20(a), SCRCrimP. ("All requests for legal instructions to the jury shall be submitted at the close of the evidence, or at such earlier time as the trial judge shall reasonably direct.").

Appellant that [issue] was *a jury charge issue which would only be discussed at the appropriate time*. (Tr.p.416-p.417) (emphasis added).

Trial – State's Case

After all pretrial motions and arguments were addressed and the jury was sworn, the trial court gave brief preliminary instructions to the jurors. (Tr.p.420-p.427). The parties then made opening statements. The solicitor explained the single charge against Appellant stemmed from the September 5, 2017 incident, when, while fulfilling her duties to protect the community as a law enforcement officer, Sergeant Rainey came in contact with Appellant and Appellant threatened her safety. He further explained that Sergeant Rainey would testify about the events surrounding the alleged threats, including describing Appellant's demeanor when he made them. Finally, the solicitor explained the jury would be shown video recordings of the incident and claimed this was not a complicated case for them to resolve. The solicitor said the jury would simply have to decide whether there was a threat and if so, whether Appellant willingly made that threat. (Tr.p.428-p.429). Appellant then gave an opening statement claiming he was innocent and was simply trying to fight for his rights. He argued he did not break the law and did not threaten anybody—admitting he may have "vented" in a disrespectful way but claiming he did not convey an actual threat to Sergeant Rainey. Appellant argued his statements were protected by his freedom of speech. (Tr.p.429-p.433).

The State then presented its case-in-chief, which consisted entirely of testimony from CCSO Sergeant Danielle Rainey and evidence introduced in association with her testimony. Sergeant Rainey testified that on September 5, 2017, she arrested Appellant for a traffic offense and then transported him to the detention center in Charleston County for booking. She identified Appellant in the courtroom. Sergeant Rainey explained that when a person is arrested

for DUI, they are taken to the DataMaster room and given an opportunity to provide a breath sample, all of which is video recorded. (Tr.p.433-p.437). The State then introduced a video recording that had been edited down to two short clips by stipulation of the parties, which was admitted without objection and played for the jury. (Tr.p.441-p.442) (State's Exhibit #1).

After watching the video, Sergeant Rainey testified that she understood the comments it included as something Appellant *would do to her if he was not in handcuffs*. She further testified she interpreted the statements as threats which she did not take lightly. Sergeant Rainey then testified Appellant also made offensive statements during the transit from the arrest location to the jail. (Tr.p.443-p.444). She said: "There was a lot of statements made, a lot of kicking to the back of the cage and his face was literally buried in the cage towards, like, right here saying he was going to kick my ass, I'm a dumb black bitch, I can't believe you did this, you're black, you're just sad." (Tr.p.444, lines 16-20).

On cross-examination, Sergeant Rainey rejected Appellant's characterization that she was not threatened and countered that *she felt "extremely threatened"* by Appellant's comments. She explained that his attempt to qualify or minimize his threats by focusing on comments like "I wish" did not change the context of the statements. Sergeant Rainey further testified that while leaving the DataMaster room, Appellant said: "I won't be in here long, *I'm going to kick your ass*." (Tr.p.445-p.471) (emphasis added).

On redirect, Sergeant Rainey testified that during Appellant's transport to the detention center he said: "*I am going to fight you.*" (Tr.p.471-p.472) (emphasis added). She then described some of the statements Appellant made to her throughout the incident including: (1) that he would slap the s--- out of her; (2) that he would beat the f--- out of her; (3) that he would punch a woman like her; (4) that he would beat the f--- out of a woman like her; (6) that he

would spit on y'all motherf---ers. Rainey testified she interpreted these statements as indications that when Appellant was not handcuffed and being recorded, he would in fact try to do these things. Finally, she confirmed Appellant's statement from the video tape that he would take a s---, put it in his hand, throw it in her f---ing face, and smash that s--- and rub it on her face. (Tr.p.471-p.475). Upon completion of Rainey's testimony, the State rested. (Tr.p.475).

Trial - Directed Verdict

Appellant moved for a directed verdict, arguing the evidence showed he did *not* make a threat to Sergeant Rainey. He then complained that the State had elicited testimony about statements he allegedly made to Sergeant Rainey *beyond* those described in the arrest warrant affidavit—all of which had qualifying language. Appellant argued the solicitor was effectively conforming the evidence to match the definition of "threat" Appellant had been advancing, and claimed any testimony which went beyond the affidavit was "falsified," which made all of Sergeant Rainey's testimony "not credible." (Tr.p.476-p.481). The solicitor simply responded that there was sufficient evidence in the record to withstand the motion for a directed verdict. He noted he had prepared a request to charge and a seven-page brief articulating the State's position in regard to the term "threat." (Tr.p.481 -p.482; Court's Exhibit 7). Even though the brief had been provided to Mr. D'Angelo *before* the court allowed Appellant to proceed *pro se*, Appellant objected, complaining that since it had not been given to him earlier he never had an opportunity to respond or prepare. (Tr.p.482, lines 7-8). The trial court reminded Appellant that the State's brief on the definition of "threat" was in the nature of a request for a jury instruction rather than a pleading and that both parties could request jury instructions from the court, *all of which would be handled at the jury charge portion of the trial.* (Tr.p.482-p.484) (emphasis added). After hearing the State's full response, the trial court denied Appellant's motion for a directed verdict.

The judge noted she had found two cases in South Carolina which defined "threat" and was debating whether to charge the definition from Black's Law Dictionary that was recognized in those cases. Regardless, the trial judge summarily rejected Appellant's challenge to the admission of testimonial evidence which extended *beyond* the facts in the arrest warrant affidavit, even if those facts ultimately satisfied Appellant's proposed definition of "threat." (Tr.p.484-p.487).

Trial - Right to Testify and Appellant's Defense

The trial judge next advised Appellant, outside the presence of the jury, regarding his right to testify or not testify, stating that if he decided not to testify, the court would instruct the jurors that they cannot give that fact any consideration whatsoever. (Tr.p.491-p.492). After taking a brief recess to allow Appellant to consult with members of his family, Appellant advised the court he would testify in his own defense. (Tr.p.491, line 13-p.494, line 22). Appellant then took the stand and was allowed to offer sworn testimony in the form of a narrative, with the solicitor periodically raising objections to certain portions of Appellant's testimony. Appellant testified he did not intend for Sergeant Rainey to believe his words and that he was embarrassed by what he had said. He argued that if particular words truly put her in fear, those words would have been in the affidavit rather than in additional words she now claimed that he said in her trial testimony. Appellant then focused on his use of terms like "wish" and "could" from the videotape, arguing these qualifying words demonstrated the statements were things he knew he could not actually do and therefore were not "threats." He asked the jury to make its own determination about whether what he said was a threat while considering his freedom of speech and the mental state required to prove guilt. (Tr.p.496-p.505).

Under cross-examination, Appellant refused to acknowledge that regardless of his actual intent, Sergeant Rainey could have perceived his words as a threat. He also refused to acknowledge that Sergeant Rainey had no way to know what he would do in the future once he was not in his handcuffs. Appellant did admit; however, that the words that came out of his mouth were willingly and knowingly made. (Tr.p.505-p.515). On redirect, Appellant argued the jurors did not need a bunch of lawyers telling them what a "threat" is because they already know and because South Carolina Jurisprudence explains that "idle threats" are not sufficient. (Tr.p.517, lines 11-14). Upon the completion of Appellant's testimony, the defense rested. (Tr.p.517, lines 18-24). Appellant renewed his motion for a directed verdict and the trial court again denied that motion. (Tr.p.519-p.520).

Trial - Charge Conference

After the close of the evidence, as promised, the trial court began a charge conference. The trial judge put particular focus on Appellant's written request to charge the jury with the following definition of "threat:"

> A threat is defined as, a communicated intent to inflict physical or other harm on any person or on property. A declaration of an intention to injure another or his property by some unlawful act. The term "threat" means an avowed present determination or intent to injure presently or in the future. The prosecution must establish a "true threat," which means a serious threat as distinguished from words uttered as mere political argument, idle talk or jest. Black's Law Dictionary, 5th Edition.

(Tr.p.520; Court's Exhibit #2). The solicitor advised the court that the State had no problem with a portion of the requested charge, but did not support the court giving the portion about "idle" threats. The trial court agreed, noting "true threat" was not an element of the crime. The judge advised the parties were welcome to argue to the jury that it needed to be a "true threat," but it was not in the law and would not be given as part of the definition. The trial judge said she

would come up with her own definition of threat and would make it a court's exhibit *once she figured out exactly what she would charge*. (Tr.p.521, lines 2-14) (emphasis added). Appellant objected to excluding the sentence describing a "true threat" and the trial judge explained she did not want to charge anything which could constitute an improper comment on the facts. She said she instead *planned to use* a combination of the language Appellant cited from Black's Law Dictionary and case law from South Carolina, including *State v. Folk.*[4] (Tr.p.522, lines 4-24). Appellant then engaged in a lengthy back-and-forth discussion with the trial judge about the proper definition of "threat" and asked that she use the "*Watts*[5] factors" and its "true threat" analysis. The trial judge finally ended the discussion by explaining she planned to use legal precedent and black letter law to define "threat" and by telling Appellant to stop arguing and to move on to any other requests to charge. (Tr.p.522-p.535).

After an additional lengthy back-and-forth discussion of other possible jury charges, including Appellant's request to charge a strict definition of *mens rea* as well as to charge laws pertaining to the first amendment (Tr.p.535-p.561), the trial court provided an overall outline of what she would likely charge. (Tr.p.561-p.563). In regard to "threat" the trial judge said:

> . . . I will then define threat, and this is how I will define it: Threat is defined as a communicative [sic] intent to inflict harm or loss on another or another's property. That's cited in Black's Law Dictionary, the eleventh addition [sic], which is 2019, which is the most current addition [sic]. Webster defines a threat as the expression of an intention to inflict evil or injury on another, and that's pursuant to the *Brooker* case. Threats can be communicated by actions, words or deeds, and that's *State v. Folk* [sic], which is the 1992 opinion.

---

[4] Although the transcript reflects the trial judge stated, "*State v. Folk*," it appears the reference is actually to *State v. Fulp*, 310 S.C. 278, 280, 423 S.E.2d 149, 150 (Ct. App. 1992), wherein this Court, quoting a 1978 opinion from the Texas Court of Criminal Appeals, said "Threats may be communicated by actions, words or deeds."

[5] *Watts v. United States*, 394 U.S. 705 (1969).

(Tr.p.562, lines 2-10). As previously indicated by the trial judge, the outlined jury charge did *not* include any reference to, or definition of, a "true threat." After reciting the likely jury charge, the trial court asked both parties if there were any exceptions. Appellant stated: "I would just ask the Court if I could offer you one more thing the instruction which would be the Black's Law Dictionary definition of *intent*, to go along with your definition that you broke down." This led to a discussion of the charges on "intent," "willfully," "knowingly," and the *mens rea*; however, Appellant did *not* take exception to the judge's planned definition of threat. (Tr.p.563-p.569) (emphasis added).

The following morning, the trial court reconvened the charge conference. The trial judge said: "I'm going to go over the instructions *one more time* so that everybody is clear as to what the Court will be instructing." She then went over all of the intended jury charges. (Tr.p.572-577). As to the definition of "threat" the trial court said:

> . . . The State must prove beyond a reasonable doubt that the threat was knowing and willful. Threat is defined as a communicated intent to inflict harm or loss on another or another's property, and that is citing Black's Law Dictionary, which I will not instruct to the jury but I give you for reference. Webster defines a threat as the expression of an intention to inflict evil or injury on another. That is also reference in case law. Threats can be communicated by actions, words or deeds, and that's citing *State v. Folk* [sic].

(Tr.p.574, lines 13-22). The trial court asked if there were *any exceptions* to the charge proposed, from the defense. Appellant responded: "I just would like to raise a couple of objections on the charge." He proceeded to make two specific objections—one to the trial court's decision to not read the full statute and the second to the charge regarding the stipulation. Appellant did *not* take exception to or object to the court's intended charge on the definition of "threat." The trial judge then asked: "Is there anything else you'd like to note as an exception to the charge?" Appellant responded: "*no further objections*." (Tr.p.577, line 7-p.579, line 10).

Trial - Closing Arguments and Jury Charge

After the trial court denied Appellant's request to give the last argument, the parties made closing arguments. During its close, the State covered the definition of "threat" and then asked the jury to reject any suggestion from Appellant that his threats were prefaced in such a way as to render them non-threatening. The solicitor noted that Sergeant Rainey had interpreted Appellant's words as threats, but also argued the statute did not require that she actually feel threatened. (Tr.p.588, line 4-p.589, line17). Appellant then gave a closing argument, asking for a verdict of not guilty. He argued the solicitor had "cherry picked" the definition of "threat" he wanted. Appellant then defined "threat" how he believed it should be defined instead, including the definition of "true threat" he had proposed in his request to charge. (Tr.p.595, line 12-p.597, line 14). In reply, the solicitor argued there was no intent requirement and that the *mens rea* in this case was knowingly and willfully as set forth in the statute. He argued it did not matter whether Appellant thought it was a threat, or Sergeant Rainey thought it was a threat, only whether a threat was made. The solicitor ended by pointing out that Appellant was not a lawyer or judge and therefore, the jury should not take his word for the law and should instead rely on what the judge would charge. (Tr.p.606-p.607).

The trial judge then charged the jury on the roles of the judge and jury, stipulations, the credibility of witnesses, direct evidence, circumstantial evidence, the indictments, the State's burden of proof, the presumption of innocence, the statutory elements of the offense, criminal intent, and the verdict forms. (Tr.p.561-p.619). In regard to the statute, the trial court charged:

> Ladies and gentlemen, the defendant is charged by indictment 2018-GS-10-4368 with the offense of threatening the life, person or family of a public official. The State must prove beyond a reasonable doubt that the defendant knowingly and willfully delivered or conveyed to a public official any letter or paper, writing, print, missive, document or electronic

> communication, or verbal or electronic communication which contains a threat to take the life of or to inflict bodily harm upon the public official or members of his immediate family, if the threat is directly related to the public official's professional responsibilities.

(Tr.p.614, line 22-p.615, line 6). The trial court then defined public official and explained the parties had stipulated: "that Sergeant Rainey is a public official and that the statements were made in her professional responsibility . . . ." (Tr.p.615, lines 7-18).

In regard to the definition of threat and the *mens rea* required for a conviction under section 16-3-1040(A), the trial court then charged the jury as follows:

> . . . Knowingly means with knowledge, conscientiously [sic], not accidentally. Willfully means that it was not done by accident but was done knowingly or intentionally. *The State must prove beyond a reasonable doubt that the threat was knowing and willful.* Threat is defined as a *communicated* intent to inflict harm or loss on another or another's property. Webster defines a threat as the expression of an *intention* to inflict evil or injury on another. Threats can be communicated by actions, words or deeds.

(Tr.p.615, lines 17-25) (emphasis added). In regard to criminal intent, the trial court charged the jury as follows:

> I further instruct you that in order to establish criminal liability, criminal intent is required. For example, the mental state required to be proven by the State in this case for a particular crime might be purpose, intent, or knowledge. Criminal intent must be proven by the State beyond a reasonable doubt. Criminal intent is always a matter that must be determined by the jury from the circumstances surrounding the situation. There is no way to prove intent to a mathematical certainty. There is no way medical science can dissect a person's brain and determine what the person had in mind, so the law says criminal intent may be inferred from the circumstances shown to have existed. This is how you make a determination of whether or not intent was present. It is not necessary to establish intent by direct and positive evidence, but intent may be established by inference in the same way as any other fact by taking into consideration the acts of the parties and all the facts and circumstances of the case. Criminal intent is a mental state, a conscious wrongdoing. It is up to you to determine what

> the defendants entitled [sic] to do or intended to do based on the circumstances shown to have existed. Criminal intent can arise from action or a failure to act. It may arise from negligence, recklessness, or an indifference to duty, or to consequences that are considered by the law to be the equivalent criminal intent.

(Tr.p.616, lines 1-23).

At the conclusion of the charge, the trial court asked if there were any exceptions. Appellant stated: "I would just like to raise all previous objections, and I also would like to request a mistrial due to the fact that the jury was charged with something that will be very prejudicial to me." The judge responded: "Sir, we've already had a charge conference, and you should have raised it previous. There is no basis for a mistrial. If there is an additional instruction you're requesting, you need to make me aware of it. That's why they haven't begun their deliberations yet. . . . And *I've already noted all of your objections to the charge at the charge conference.*" (Tr.p.619, line 17-p.620, line 8) (emphasis added). Appellant said he wanted to renew his motion for a mistrial, a motion which turned out to be based entirely on complaints about the trial court's charge on the stipulation Appellant made with the State about the video evidence. After hearing arguments, the trial court denied the motion for a mistrial. (Tr.p.620-p.630).

Trial - Verdict and Sentencing

At the conclusion of trial, the jury found Appellant guilty as indicted. (Tr.p.633-p.651). After the verdict, Appellant said: "I would just like to renew all of my other motions, a motion for mistrial, the motion for new trial and the motion of my procedural rights have been deprived of me." (Tr.p.653, line 24-p.654, line 2). During the lengthy post-verdict discussion, the parties and the trial court continued to debate whether Appellant's words constituted a threat as had been determined by the jury. (Tr.p.680, lines 8-16; p.684, lines 21-25; p.697, lines 6-14; p.698,

lines 11-21; p.699, line 24-p.700, line 11; p.714, line 19-p.715, line 10). Appellant was sentenced by Judge Jefferson to four (4) years' imprisonment suspended upon the service of one hundred and nine (109) days' time-served and four (4) years' probation. (Sentencing Sheet; Tr.p.722-p.724).

STANDARD OF REVIEW

In criminal cases, an appellate court sits to review only errors of law, and it is bound by the trial court's factual findings unless they are clearly erroneous. *State v. Brown*, 401 S.C. 82, 87, 736 S.E.2d 263, 265 (2012), *cert. denied*, 569 U.S. 1023 (2013); *State v. Wilson*, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001). On appeal, an appellate court reviewing a trial judge's jury charge must view the charge as a whole and in light of the evidence and issues presented at trial. *State v. Dent*, 440 S.C. 449, 453, 892 S.E.2d 294, 296 (2023); *State v. Simmons*, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009); *see Todd v. State*, 355 S.C. 396, 402, 585 S.E.2d 305, 308 (2003) ("[J]ury charges should be examined in their entirety and not in isolation[.]"). The appellate court will only reverse a trial judge's decision regarding jury instructions when that decision constituted a prejudicial abuse of discretion. *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000); *Rauch v. Zayas*, 284 S.C. 594, 597, 327 S.E.2d 377, 378 (Ct. App. 1985). An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. *Brown* at 87, 736 S.E.2d at 265; *State v. Jennings*, 394 S.C. 473, 477-78, 716 S.E.2d 91, 93 (2011); *State v. Morris*, 376 S.C. 189, 205-06, 656 S.E.2d 359, 368 (2008). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial judge's ruling is supported by any evidence. *Wilson* at 6, 545 S.E.2d at 829. Meanwhile, if the jury instructions presented were substantially correct and covered the applicable law, the trial

judge's decision will not be reversed on appeal. *State v. Marin*, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016); *State v. Ezell*, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct. App. 1996). Indeed, the substance of the law is what must be charged to the jury. *Marin*, 415 S.C. at 482, 783 S.E.2d at 812-13.

ARGUMENT

I.

Appellant's claim that the trial court erred in refusing to charge the jury with his requested definition of "threat" is not preserved for appellate review because Appellant waived any previous objection by repeatedly declining to renew his objection during the charge conference. In any event, the trial court did not err in declining to instruct the jury with Appellant's requested definition of "threat" because the charge given was substantially correct and adequately covered the law applicable to the case such that a reasonable juror would have understood the charge. Finally, any possible error in the jury charge was entirely harmless because, beyond a reasonable doubt, it did not affect the jury's deliberations or contribute to the verdict.

Appellant argues the trial court erred in denying his request to charge the jury with his requested definition of "threat" because the definition was supported by case law and was the "crux" of his defense. He contends both the United States Supreme Court, and our supreme court, differentiate between constitutionally protected speech and unprotected "true threats," and that where the jury had to determine whether his communication constituted a "true threat," the definition provided by the trial court erroneously failed to shed any light on the matter. Appellant argues that for the jury to properly consider the case, it must have been instructed in the difference between an idle threat and a "true threat." (Brief of Appellant, p.7-p.8).

The State disagrees and submits Appellant's argument should be denied and dismissed for several reasons. First, his argument is not preserved for appellate review because Appellant waived/abandoned any previous objection by repeatedly declining to renew his objection during

the charge conference and thereby acquiescing in the trial court's proposed instruction. Second, even if preserved the trial court did not err in declining to instruct the jury with Appellant's requested definition of "threat" because the charge given was substantially correct and adequately covered the law applicable to the case such that a reasonable juror would have understood the charge. Indeed, the trial court accurately defined "threat" pursuant to well-established South Carolina precedent and charged a *mens rea* with a higher culpability state than the *mens rea* promoted in Appellant's proposed definition. Finally, any possible error in the jury charge was entirely harmless where it could not have affected the jury's deliberations or contributed to the guilty verdict.

Issue not Preserved for Review

First and foremost, Appellant's complaint about the trial court's failure to charge the jury with his proposed definition of "threat" is simply not preserved for appellate review. In order for an issue to be preserved for appellate review, the issue must have been: (1) raised to and ruled upon by the trial court; (2) raised by the Petitioner; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. *State v. Rogers*, 361 S.C. 178, 183, 603 S.E.2d 910, 912-13 (Ct. App. 2004). "If a party fails to properly object, the party is procedurally barred from raising the issue on appeal." *State v. Johnson*, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005). Regarding the requirement that a timely objection be raised, a defendant must make a contemporaneous objection to a perceived error during trial in order to preserve the issue for further review. *State v. Hoffman*, 312 S.C. 386, 393, 440 S.E.2d 869, 873 (1994). Thus, when a perceived error arises, the defendant must object at the first opportunity to do so, or the issue is waived. *State v. Sullivan*, 310 S.C. 311, 314, 426 S.E.2d 766, 768 (1993). Furthermore, our courts have consistently refused to apply the plain error rule. *State v. Vanderbilt*, 287 S.C. 597,

598, 340 S.E.2d 543, 543-44 (1986); *State v. Passmore* , 363 S.C. 568, 583-84, 611 S.E.2d 273, 281-82 (Ct. App. 2005). The issue preservation requirement also applies to assertions of constitutional violations. *State v. Passmore*, 363 S.C. 568, 584, 611 S.E.2d 273, 282 (Ct. App. 2005).

The South Carolina Rules of Criminal Procedure provide that: "All requests for legal instructions to the jury shall be submitted at the close of the evidence, or at such earlier time as the trial judge shall reasonably direct." Rule 20(a), SCRCrimP. They further provide that:

> Notwithstanding any request for legal instructions, the parties shall be given the opportunity to object to the giving or failure to give an instruction before the jury retires, but out of the hearing of the jury. Any objection shall state distinctly the matter objected to and the grounds for objection. Failure to object in accordance with this rule shall constitute a waiver of objection.

Rule 20(b), SCRCrimP. In interpreting Rule 20, our courts have repeatedly recognized that it is "the long-standing rule that where a party requests a jury charge and, after opportunity for discussion, the trial judge declines the charge, it is unnecessary, to preserve the point on appeal, to renew the request at conclusion of the court's instruction." *See State v. Johnson*, 439 S.C. 331, 340-41, 887 S.E.2d 127, 131-32 (2023) (quoting *State v. Johnson*, 333 S.C. 62, 64 n.1, 508 S.E.2d 29, 30 n.1 (1998)); *State v. Bowers*, 428 S.C. 21, 30-32, 832 S.E.2d 623, 628-29 (Ct. App. 2019); *State v. Bryant*, 391 S.C. 225, 231, 705 S.E.2d 465, 469 (Ct. App. 2010). Thus typically, if there was an on-the-record discussion regarding a requested charge and an on-the-record ruling as to whether the court would give that charge, the defendant would not need to again object to the charge once given to preserve the issue for appeal.

The typical rule does *not* hold, however, when a defendant abandons a request to charge after the on-the-record ruling denying his request. *State v. Rios*, 388 S.C. 335, 340-41, 696 S.E.2d 608, 611-12 (Ct. App. 2010). In *Rios*, the defendant argued the trial court erred in failing

to charge the jury on involuntary manslaughter and self-defense. *Rios*, 388 S.C. at 340, 696 S.E.2d at 611. During the charge conference, he first asked the court to charge the jury on accident, self-defense, voluntary manslaughter, and involuntary manslaughter; however, after initially withdrawing his request for voluntary manslaughter and then arguing about whether the evidence supported charges for involuntary manslaughter and self-defense, Rios asked the trial court to charge voluntary manslaughter, accident, and murder. *Rios*, 388 S.C. at 340-41, 696 S.E.2d at 611-12. The trial court agreed to the proposed charges, and neither the State nor Rios objected. *Id.* Later, after charging the jury, the trial court asked if there were any objections to the charges given and neither the State nor Rios had any objections. *Id.* This Court found Rios's argument was not properly before it for review because he abandoned his request for jury charges on involuntary manslaughter and self-defense *when he acquiesced* to the trial court's charge decision on the decision on those issues, and asked the trial court to charge voluntary manslaughter, accident, and murder. *Rios*, 388 S.C. at 341, 696 S.E.2d at 612 (emphasis added). The Court found Rios waived appellate review of the issue because an issue conceded in the trial court cannot be argued on appeal. *Id.*

Here, just as in *Rios*, Appellant waived or abandoned his challenge to the trial court's denial to charge the jury on his definition of "threat" because he repeatedly declined to renew his objection during the charge conference, despite being given two distinct opportunities to take exception to the trial court's decision concerning the definition of threat. First, after a lengthy back-and-forth discussion of possible jury charges (Tr.p.535-p.561), the trial court provided the parties with an overall outline of what she would likely charge in regard to the definition of "threat," an intended charge which did *not* include any reference to, or any specific definition of, a "true threat." (Tr.p.561-p.563). After reciting the likely jury charge, the trial court asked both

parties if there were any exceptions. Appellant requested the addition of a definition of "intent;" however, Appellant did *not* take exception to the judge's planned definition of threat. (Tr.p.563-p.569) (emphasis added). Second, when the trial court reconvened the charge conference the following morning, the trial judge went over the intended instruction "*one more time* so that everybody is clear as to what the Court will be instructing." Again, the intended instruction did not include Appellant's proposed definition of "threat." (Tr.p.572-577). The trial court asked if there were *any exceptions* to the charge proposed, and while Appellant did raise two specific objections to the charge, he did *not* take exception to, or object to, the court's intended charge on the definition of "threat." The trial judge then asked: "Is there anything else you'd like to note as an exception to the charge?" Appellant responded: "*no further objections.*" (Tr.p.577, line 7-p.579, line 10). By repeatedly failing to challenge the language the trial court ruled it intended to charge on "threat," Appellant acquiesced in the ruling.

Appellant's abandonment of the issue is further illustrated by his failure to object to the "threat" charge at the conclusion of the trial court's instructions to the jury. Among other things, the trial judge charged the jury on the statutory elements set forth in section 16-3-1040(A), the definition of "threat" the trial judge advised she would give, definitions of "knowingly" and "willingly," a description of the *mens rea* required for conviction, and a charge on criminal intent. (Tr.p.561-p.619). At the conclusion of the charge, the trial court asked if there were any exceptions. Appellant claimed he wanted to renew "all previous objections" and moved for a mistrial. The trial court reminded Appellant there had already been a charge conference where he was given the opportunity to challenge the court's intended jury charge and that the court had already noted all of his objections to the intended charge at that conference. Appellant then proceeded to argue his motion for a mistrial, which was based *entirely* on complaints about the

trial court's charge on the stipulation, *not* on the charge on "threat." (Tr.p.619-p.630). Appellant's argument is not preserved for appeal.

Discussion / Analysis

Even if this Court finds Appellant's argument was sufficiently preserved, the trial court's jury charge defining "threat" as described in South Carolina case law did not constitute reversible error because the charge given was substantially correct and adequately covered the law applicable to the case such that a reasonable juror would have understood the charge. Not only did it adequately define "threat" as described by our courts, it also set a higher level of *mens rea* than the one described in the cases upon which Appellant relies. Appellant's argument fails on the merits.

"Judges shall not charge juries in respect to matters of fact, but shall declare the law." S.C. Const. art. V, § 21. The law to be charged is determined from the evidence presented at trial. *State v. Rivera*, 389 S.C. 399, 404, 699 S.E.2d 157, 159 (2010); *State v. Holland*, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). "No instruction should be given by the trial judge, at the request of the appellant, which tenders an issue which is not presented or supported by the evidence." *State v. Weaver*, 265 S.C. 130, 137, 217 S.E.2d 31, 34 (1975). The trial court only commits reversible error if it fails to give a requested charge on an issue raised by the evidence. *State v. Hill*, 315 S.C. 260, 262, 433 S.E.2d 838, 849 (1993). On appeal, an appellate court reviewing a trial judge's jury charge must view the charge as a whole and in light of the evidence and issues from trial. *State v. Dent*, 440 S.C. 449, 453, 892 S.E.2d 294, 296 (2023); *State v. Simmons*, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009). If the jury instructions presented were substantially correct and covered the applicable law, the trial judge's decision will not be reversed on appeal. *State v. Marin*, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016);

State v. Ezell, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct. App. 1996). Indeed, the substance of the law is what must be charged to the jury. *Marin*, 415 S.C. at 482, 783 S.E.2d at 812-13. Here, the trial court's instruction was substantially correct and covered the applicable law; therefore, it must be affirmed under this Court's standard of review.

The trial court's charge adequately covered the law applicable to the case such that a reasonable juror would have understood the charge and what he or she was called upon to decide. Indeed, the trial court properly charged the jury on the relevant and applicable law to Appellant's case. Specifically, the trial judge instructed the jury on the roles of the judge and jury, stipulations, the credibility of witnesses, direct evidence, circumstantial evidence, the indictments, the State's burden of proof, the presumption of innocence, the statutory elements of the offense under § 16-3-1040(A), criminal intent, and the verdict forms. (Tr.p.561-p.619). Of particular relevance; however, the trial court charged the jury as follows:

> . . . *Knowingly* means with knowledge, conscientiously [sic], not accidentally. *Willfully* means that it was not done by accident but was done *knowingly or intentionally. The State must prove beyond a reasonable doubt that the threat was knowing and willful.* Threat is defined as a *communicated* intent to inflict harm or loss on another or another's property. Webster defines a threat as the expression of an *intention* to inflict evil or injury on another. Threats can be communicated by actions, words or deeds.

(Tr.p.615, lines 17-25) (emphasis added).

In 1992, this Court explained that: "Threats may be communicated by actions, words or deeds." *State v. Fulp*, 310 S.C. 278, 280, 423 S.E.2d 149, 150 (Ct. App. 1992) (*quoting Seaton v. State*, 564 S.W.2d 721, 724 (Tex. Crim. App. 1978)). In *Fulp*, the Court held the evidence that Fulp: (1) followed the victim; (2) grabbed the victim and pulled her to the ground; (3) spun the victim around and grabbed both her breasts with his hands; and (4) leaned toward the victim and began fumbling with the clothing that covered her stomach, supported the inference that Fulp

threatened to use high and aggravated force upon the victim to accomplish a sexual battery. *Id.* This Court made no distinction between constitutionally protected speech and unprotected "true threats," likely because the threats communicated to the victim by Fulp's actions and deeds, could not possibly be interpreted under an objective standard as mere idle talk or jest.

In regard to words alone, our supreme court held that a juvenile's *threat* of a police officer constituted a new and distinct crime that provided independent grounds for the juvenile's arrest pursuant to § 16-3-1040(A) of the South Carolina Code. *In the Interest of Jeremiah W.*, 361 S.C. 620, 625, 606 S.E.2d 766, 768 (2004). In so holding, the court noted: "The language used by Respondent . . . was a willful communication 'which contain[ed] a threat to take the life of or inflict bodily harm upon [Officer Cooke] . . .; [a threat which was] directly related to [Officer Cooke's] . . . professional responsibilities.'" *Id.* at 624, 606 S.E.2d at 768. As described by the supreme court:

> Officer Cooke placed respondent, who was handcuffed, into the back of the patrol car. During the ride, respondent refused to answer Officer Cooke's questions and used profanity. He also leaned forward through the opening of the plexi-glass separating the front from the rear of the patrol car and yelled at the officer. After Officer Cooke told respondent to sit back, Officer Cooke testified respondent made a gesture as if he was going to spit at Officer Cooke. The officer then sprayed the back seat with pepper spray. At the time of the spraying, Officer Cooke testified respondent stated he had a gun, and he was "*going to come blow my 'f-ing' head off.*"

Id. at 623, 606 S.E.2d at 767-68. (emphasis added). Again, there was no discussion of whether the juvenile's words were political speech, idle talk, or jest, because the words themselves left no objective doubt.

Here, the trial judge relied on the definition of threat from Black's Law Dictionary coupled with this Court's explanation that a threat can be communicated by actions, words, or

deeds, to give the jury a common-sense definition of the term. Where the evidence adduced at trial, including testimony that Appellant said to Sergeant Rainey: (1) "I am going to kick your ass." (Tr.p.444, lines 14-20; p.455, line 3-6; p.456, line 22-25; p.464, lines 12-23; p.465, lines 3-6; p.465, lines 18-23); (2) "I am going to fight you." (Tr.p.471-p.472); (3) he would: (a) "slap the s--- out of her," (b) "beat the f--- out of her," (c) "punch a woman like her," (d) "beat the f--- out of a woman like her," and (e) "spit on y'all motherf---ers" (Tr.p.473-p.474); and (4) he would "take a s---, put it in his hand, throw it in her f---ing face, and smash that s--- and rub it on her face, (Tr.p.471-p.475); such evidence could lead to no other conclusion than that Appellant's words were objectively neither political, idle, nor made in jest. Consequently, there could be no prejudice from the definition given by the trial court. Furthermore, the trial judge's charge on the *mens rea* for the crime *eliminated* any arguable prejudice from the definition by setting a *higher bar* for conviction than the one described in the "true threat" line of cases cited by Appellant.

A basic premise in criminal law is that ordinarily, in order to establish criminal liability, a criminal intent of some form is required. *State v. Ferguson*, 302 S.C. 269, 271-72, 395 S.E.2d 182, 183 (1990). This premise is rooted in the maxim: *actus non facit reum nisi mens sit rea.*[6] *Id.* In South Carolina, what *mens rea* is required for conviction of a statutory offense is a question of legislative intent. *United States v. Clemons*, 442 S.C. 670, 675–76, 901 S.E.2d 280, 283 (2024). The required *mens rea* for a particular crime can be classified into a hierarchy of culpable states of mind in descending order of culpability, as purpose, knowledge, recklessness, and negligence. *State v. Jefferies*, 316 S.C. 13, 17–18, 446 S.E.2d 427, 429–30 (1994); *Ferguson*, 302 S.C. at

[6] "An act does not make [the doer of it] guilty, unless the mind be guilty; that is, unless the intention be criminal." BLACK'S LAW DICTIONARY 36 (6th ed. 1990).

271, 395 S.E.2d at 183 (explaining that the mental state required to be proven by the State for a particular crime might be purpose (intent), knowledge, recklessness, or criminal negligence).

In 2023, the United States Supreme Court decided *Counterman v. Colorado*, 600 U.S. 66 (2023). Counterman was convicted for making threatening statements under an objective standard that didn't require the state to prove he had any subjective intent to threaten. 600 U.S. at 70–71. He appealed, arguing that the First Amendment requires such proof in a criminal prosecution for a true threat. *Id.* at 72–73. The Court explained that true threats of violence fall outside the First Amendment's protections and can be prosecuted as crimes. *Id.* at 69. Though a statement can be considered a true threat "based solely on its objective content," *Id.* at 72, the Court held that the First Amendment requires more in a true-threat prosecution. The government must prove the defendant had "some understanding of his statements' threatening character." *Id.* at 73. At a minimum, it must prove a *mens rea* of recklessness, meaning the defendant "consciously disregarded a substantial risk that his communications would be viewed as threatening violence." *Id.* at 69, 143 S.Ct. 2106.

At trial, Appellant relied upon *Watts*, a case addressing a 1917 statute prohibiting knowing and willful threats to take the life of the President, and *Virigina v. Black*, 538 U.S. 343 (2003), a case concerning Virginia's statute banning cross burning with an intent to intimidate a person. As noted in *Counterman*, these cases stand for the proposition that the First Amendment does not protect a "true threat," defined as a serious expression of an intent to commit unlawful violence, even when the "speaker [does] not actually intend to carry out the threat." *Virigina v. Black*, 538 U.S. at 359–60; *see also Watts*, 394 U.S. at 707–08 (distinguishing "true threats" from facetious or hyperbolic remarks). On appeal, Appellant now also relies on *Counterman*, a

case which notably announced a "new rule" that had not been decided at the time of his trial. *In re Rendelman*, 129 F.4th 248, 253 (4th Cir. 2025).

In *Counterman*, the Supreme Court recognized "[t]rue threats of violence ... lie outside the bounds of the First Amendment's protection," and that "a statement can count as such a threat based solely on its objective content." *Counterman*, 600 U.S. at 72. The issue before the Court was "whether the First Amendment nonetheless demands that the State in a true-threats case prove that the defendant was aware in some way of the threatening nature of his communications." *Id.* at 73. The Supreme Court ultimately held that "the State must prove in true-threats cases that the defendant had some understanding of his statements' threatening character," and that "a **recklessness** standard [of *mens rea*] is enough." *Id.* (emphasis added). "In the threats context, it means that a speaker is aware 'that others could regard his statements as' threatening violence and 'delivers them anyway.'" *Id.* at 79.

Here, Appellant was indicted under § 16-3-1040(A) for knowingly and willfully delivering or conveying, to a public official, a verbal communication which contains a threat to inflict bodily harm upon the public official. The trial court charged the relevant language from the statute, defined knowingly and willfully, and then charged the jury that: "The State must prove beyond a reasonable doubt that *the threat was knowing and willful.*" (Tr.p.615, lines 20-21) (emphasis added). Thus, to the extent the same principles regarding *mens rea* apply, § 16-3-1040(A), as charged by the trial court, meets the *mens rea* standard the Supreme Court established in *Counterman*. As charged by the trial court, the State had to prove Appellant's communicated threat was a *knowing and willful threat* for Appellant to be convicted for violation of § 16-3-1040(A). The trial court, thus, required proof of at least the same, if not a higher degree of *mens rea*, than the recklessness standard. *See Counterman*, 600 U.S. at 75–76

(recognizing a higher standard of *mens rea* is required for specific intent crimes such as fraud, defamation, and incitement to unlawful conduct than recklessness). By instructing the jury on the applicable law with an appropriate recitation of the statutory elements of the crimes and an appropriate definition of "threat," the trial judge committed no error in instructing the jury during Appellant's trial. *State v. Adkins*, 353 S.C. 312, 317-18, 577 S.E.2d 460, 463 (Ct. App. 2003) ("Generally, the trial court is required to charge only the current and correct law of South Carolina.").

Harmless Error

Even if this Court finds the trial court somehow erred in giving the overall jury charge without directly including Appellant's definition of "threat," any possible error was harmless beyond a reasonable doubt because the error was not prejudicial to Appellant. To reverse a criminal conviction based on an erroneous jury instruction, the appellate court must find the error was a prejudicial error. *State v. Bowers*, 436 S.C. 640, 646, 875 S.E.2d 608, 611 (2022). Prejudicial error in a jury instruction is an error that contributed to the jury verdict. *Id.* The question that must be addressed is not whether the error was harmless beyond a reasonable doubt because of overwhelming evidence of guilt; rather, the question is whether the erroneous jury charge affected the jury's deliberations and, thus, contributed to the verdict. *Id.* at 646-47, 875 S.E.2d at 611. Indeed, when considering whether an error with respect to jury instructions was harmless, the appellate court must determine beyond a reasonable doubt that the error complained of did not contribute to the verdict. *State v. Perry*, 440 S.C. 396, 408, 892 S.E.2d 273, 279 (2023).

Here, Appellant could not possibly have suffered any prejudice because the jury could have reached no other conclusion but that he knowingly and willfully communicated a "true

threat" to Sergeant Rainey. If the appellate court has any reasonable doubt as to whether the erroneous charge contributed to the verdict, it must reverse the conviction. *Id.* To determine whether the erroneous jury charge contributed to the verdict the court must attempt to determine how the jury understood the jury instruction. *Id.* at 647, 875 S.E.2d at 611. The appropriate test involves determining what a reasonable juror would have understood the charge to mean. *Id.*

At the conclusion of Appellant's trial, if the jury had reached a final verdict after deliberating with *no instruction* at all on the definition of a threat, the erroneous omission would arguably have contributed to that verdict because a reasonable juror would not have understood what he or she was called upon to decide. But here, the trial court gave the jury a clear, no-nonsense instruction on "threat," telling the jurors Appellant could not be convicted unless the State proved beyond a reasonable doubt that the threat was knowing and willful. If anything, this specific instruction, given in conjunction with the charge on criminal intent, served to highlight or emphasize the importance of determining if Appellant's words constituted a "threat" with the requisite level of *mens rea*. A reasonable juror would not only have understood the jury charge as a whole, he or she would have given appropriate scrutiny to the necessary level of *mens rea* to convict Appellant under the statute. Consequently, the alleged error in the jury charge did not contribute to the guilty verdicts and could not have prejudiced Appellants. *Bowers* at 646-47, 875 S.E.2d at 611. Thus, any possible error was harmless beyond a reasonable doubt. For all of the reasons above, Appellant's argument should be rejected and his conviction should be affirmed.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that Appellant's conviction and sentence be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Assistant Attorney General

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

BY: _____
J. Benjamin Aplin
S.C. Bar No. 8729

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
March 19, 2025