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**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Aiken County

Honorable Maite Murphy, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

KEMONTEE DEVONTA BLOCKER,

APPELLANT.

APPELLATE CASE NO. 2024-000825

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INITIAL BRIEF OF APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

Did the trial court abuse its discretion by admitting four videos of Appellant and his then girlfriend where Appellant is seen brazenly waving a firearm and repeatedly pointing the firearm at the camera when any probative value of the evidence was substantially outweighed by the danger of unfair prejudice pursuant to Rule 403, SCRE, and where the evidence constituted bad character evidence in violation of Rule 404, SCRE?

## STATEMENT OF THE CASE

An Aiken County grand jury indicted Appellant on November 9, 2023, for murder, attempted murder, armed robbery, discharging a firearm into a vehicle, and possession of a weapon during the commission of a violent crime. R. \* (Indictments). His case was called to trial on May 13, 2024, before the Honorable Maite Murphy, and a jury. Tr. 1. Assistant Solicitors Ashley Hammack and David Rittgers represented the state. Patricia Steiner and Derek Bush represented Appellant. Tr. 2.

On May 16, 2024, the jury acquitted Appellant of armed robbery, but found him guilty of the remaining offenses. Tr. 734, l. 24 – 735, l. 16. Appellant was sentenced to life without parole for murder, thirty years for attempted murder, and ten years for discharging a firearm into a vehicle. No sentence was imposed for the weapons offense since Appellant was sentenced to life without parole for murder. Tr. 745, ll. 3-16.

On May 21, 2024, Appellant filed a motion for a new trial and a motion to reconsider sentence. A hearing was held on Appellant's motions on July 9, 2024, before Judge Murphy. Assistant Solicitor Ashley Hammack represented the state. Patricia Steiner represented Appellant. At the conclusion of the hearing, Judge Murphy orally denied both motions.

This appeal follows.

## STATEMENT OF FACTS

On the night of April 24, 2021, Joseph Copeland, the decedent, and Micheal Allen, his best friend, were “hanging out” and “smoking Black & Mild” cigars in Allen’s car. The car was parked in a Food Lion parking lot in Aiken. Shortly before midnight, Copeland messaged Reggie Jones on Facebook about purchasing marijuana. Copeland directed Allen to drive to the apartments across the street from Schofield Middle School, formally known as the Stoney-Gallman Townhomes, to meet Jones. Tr. 114, l. 7 – 115, l. 17. The messages revealed Copeland agreed to purchase a “quarter” of marijuana for sixty dollars. The last message Copeland sent to Jones stated, “I’m here.” The two then engaged in a twenty-two second Facebook audio call. R. \* (State’s Exhibit No. 20 – Cellebrite Screenshots).

Allen did not know who they were meeting to purchase marijuana, but he drove to the Stoney-Gallman Townhomes as directed. Once Allen parked, Copeland used his phone to let the individual know they had arrived. Allen and Copeland waited in the car. A few minutes later, two young Black men walked up to the passenger side of the car. While Allen recognized the men from the community, he did not know their names. Copeland, however, appeared to know the men. One of the men stood by the passenger side mirror. The other man opened the back passenger door, placed a scale on the backseat, and began to weigh the marijuana. After this man weighed the marijuana and bagged it, he placed it on the center console. Copeland then paid the men using the “Cash App” application on his phone. During the transaction, Copeland handed his phone to the man who weighed the marijuana on the backseat. The man presumably entered his account information directing where the funds should go. He then handed the phone back to Copeland who entered his passcode to confirm the transaction. Tr. 115, l. 12 – 126, l. 20.

According to Allen, after the marijuana transaction was complete, the men began talking about guns. The man who weighed the marijuana and assisted Copeland with the Cash App transaction showed Copeland his firearm. Allen claimed this gun was red and had a laser sight. The same man then said something along the lines of “Y’all must be the P word if y’all don’t got guns.” Allen suspected Copeland did not like “being called out” so Copeland pulled out his gun. This gun also had a laser sight. The man asked to see Copeland’s gun, but Copeland refused. The man said, “Oh, you must be scared, here” and gave Copeland his red gun. Copeland in turn gave the man his gun. The two “swapped guns.” Tr. 127, l. 5 – 131, l. 3.

“At some point somehow, [Copeland’s] gun ended up in the hands of the individual who was standing next to the mirror.” Copeland returned the red gun to man who had weighed the marijuana. By this point, Allen was ready to leave. He told Copeland to get his gun back. When Copeland asked for his gun, the man who was standing by the mirror (and holding Copeland’s gun) took off running. He ran diagonally “with his back showing, but with his arm” pointed backward toward the vehicle. This man fired several shots in the direction of the vehicle as he was fleeing. Tr. 132, l. 6 – 135, l. 12.

According to Allen, the other man, who had weighed the marijuana, moved to the front of the car. Allen claimed this man faced the car and began to slowly walk backward while “fumbling with items in his hand.” Eventually, this man raised a gun and shot numerous times into the vehicle. Allen, who had a gun under his thigh, returned fire. While he was shooting, Allen heard a “loud gasp of air.” He looked over at Copeland and knew he had been shot. Tr. 136, l. 4 – 137, l. 16.

Allen immediately put the car in reverse and drove to the nearest hospital. Copeland was unconscious while Allen was driving. Allen checked Copeland for a pulse, but could not find

one. Just outside the hospital entrance, Allen stopped and threw his gun, a third gun that was in the car, and Copeland's bag that contained ammo into a bush. Allen said he threw the guns and ammo into the bushes because he was "scared, not thinking, just worried." He then drove to the ambulance bay. As soon as he arrived at the hospital, Allen "hopped" out of the car, grabbed Copeland, and carried him inside. Hospital personnel began CPR on Copeland and other life saving measures. Tr. 137, l. 19 – 141, l. 3. However, Copeland succumbed to his injuries. It was later determined that he suffered a fatal gunshot wound to the chest, which struck his aorta, and a second gunshot wound to his right arm. Tr. 281, l. 20 – 283, l. 21.

A security guard, who was not "aware of the situation," told Allen he had to move his car. Allen moved the car to the nearest available parking spot. After parking his car, Allen sat in the waiting area until he was questioned by police. Allen "withheld as much" information as he could. Specifically, Allen failed to mention that he was armed during the encounter and returned fire. He also did not originally tell the police that he threw his and Copeland's guns into a bush outside the hospital. Later that afternoon, after speaking with family and friends, Allen voluntarily went to the Aiken Department of Public Safety for an interview where he told investigators "what happened." Tr. 141, l. 4 – 143, l. 23.

A couple of days later, Allen was shown two photographic lineups. He identified Appellant in one of the lineups as the individual who weighed the marijuana, assisted with the Cash App transaction, and stood in front of the car while shooting. He identified Reggie Jones in the second lineup as the individual who stood next to the side mirror during the transaction, fled first, and shot toward the vehicle "with his arm pointed" backward. Tr. 143, l. 24 – 148, l. 1; Tr. 523, l. 10 – 527, l. 20.

Law enforcement towed Allen's Ford Explorer from the hospital to the secured garage at the Aiken Department of Public Safety. The vehicle was then processed by agents with the South Carolina Law Enforcement Division. There were "several defects" in the front of the car, including the hood, windshield, and weather stripping, which "clearly" indicated the "vehicle was involved in a shooting incident." Tr. 188, ll. 2-8. The crime scene analyst determined there were eleven bullet holes in the car. Nine of the eleven holes were caused by bullets traveling from outside the vehicle inward. The other two were caused by bullets fired from inside the car outward. Tr. 225, l. 10 – 226, l. 4.

When the car was finished being processed, it was released to Allen. After Allen drove the car home, he noticed there was a digital scale on the floorboard of the backseat. Allen did not own a scale and believed the scale belonged to the perpetrators. He called Detective Jon Eagerton, who came and picked up the scale. Tr. 148, l. 12 – 149, l. 23; Tr. 548, l. 6 – 549, l. 12. The scale was later processed for fingerprints. Lieutenant Jason Griffin lifted a single latent print from the scale and submitted it to the laboratory for further examination. Tr. 527, l. 21 – 531, l. 18. The print lifted from the scale was later identified as Appellant's right thumb print. Tr. 542, l. 4 – 543, l. 3.

Investigators used Cellebrite to extract Copeland's phone, which was found in Allen's car. From the Cellebrite extraction report, law enforcement obtained the Facebook messages exchanged between Copeland and Reggie Jones arranging for the purchase of marijuana that night. They also discovered that Copeland sent sixty dollars through Cash App to an account in Appellant's name. Tr. 253, l. 21 – 261, l. 24.

Shy'Tavia James, who was dating Appellant at the time of the shooting, lived with her family in a townhome in Stoney-Gallman. She testified that she saw Appellant on April 25,

2021. He came to visit her at Stoney-Gallman sometime between 1:00 and 2:00 in the afternoon and left sometime between 8:00 and 9:00 that night. Tr. 501, l. 6 – 503, l. 11. After Appellant left, James watched television downstairs. At some point, she heard gunshots. James claimed that Appellant was not with her when she heard the gunshots and she did not see him again that night or during the early morning hours. Tr. 517, l. 8 – 518, l. 9.

James further testified that when Appellant came to see her, they would often hang out outside or in her father's truck. She admitted she often took "videos or selfies" of herself and Appellant. James identified a photograph she took on April 17, 2021, of herself with Appellant holding a gun in the "frame of the picture." See State's Exhibit No. 64 (Girlfriend Photo with Gun). She also identified videos she took of her and Appellant that same day. Appellant "was flashing a gun" in the videos. James admitted that she later sent these videos to Appellant using Facebook. Tr. 503, l. 16 – 507, l. 15. The videos, four in total, were marked and admitted over Appellant's objection as State's Exhibit No. 65. Tr. 516, ll. 1-8. Appellant is seen waving a red gun with a laser sight in the videos and repeatedly pointing the gun at the camera. See State's Exhibit No. 65 (Facebook Videos).

## STANDARD OF REVIEW

“The admission or exclusion of evidence is an action within the sound discretion of the [trial] court and will not be disturbed on appeal absent an abuse of discretion.” State v. Tapp, 398 S.C. 376, 385, 728 S.E.2d 468, 473 (2012) (citing State v. Williams, 386 S.C. 503, 509, 690 S.E.2d 62, 65 (2010)). “An abuse of discretion occurs when the conclusions of the [trial] court are either controlled by an error of law or are based on unsupported factual conclusions.” Id. (citing State v. Douglas, 369 S.C. 424, 429-30, 632 S.E.2d 845, 848 (2006)).

## ARGUMENT

The trial court abused its discretion by admitting four videos of Appellant and his then girlfriend where Appellant is seen brazenly waving a firearm and repeatedly pointing the firearm at the camera when any probative value of the evidence was substantially outweighed by the danger of unfair prejudice pursuant to Rule 403, SCRE, and where the evidence constituted bad character evidence in violation of Rule 404, SCRE.

### **Relevant Facts**

Appellant objected to State's Exhibit No. 64, a photograph Appellant's then girlfriend, Shy'Tavia James, took on April 17, 2021, of herself with Appellant allegedly holding a gun in the "frame of the picture." Appellant is not seen in the photograph. See State's Exhibit No. 64 (Girlfriend Photo with Gun). The court admitted the photograph over Appellant's objection. Tr. 505, ll. 5-11; Tr. 536, l. 17 – 537, l. 5. The state then sought to admit State's Exhibit No. 65, four videos James took of her and Appellant in her father's truck. Appellant is seen waving a red gun with a laser sight in the videos and repeatedly pointing the gun at the camera. See State's Exhibit No. 65 (Facebook Videos). James admitted she later sent these videos to Appellant using Facebook. Tr. 503, l. 16 – 507, l. 15. Appellant objected to the admission of these videos. Tr. 507, ll. 16-19.

Defense counsel argued the videos were "incredibly prejudicial" and any probative value was "minimal" since Shy'Tavia James was present to testify that Appellant possessed a red gun and the photograph of James with the red gun was already admitted into evidence. Accordingly, counsel argued the videos should be excluded pursuant to Rule 403, SCRE. She also emphasized that all four videos "have rap music in the background" and the lyrics are "extremely prejudicial." Moreover, counsel argued the videos provide improper character

evidence. She asserted the state was “basically trying to say that Mr. Blocker [Appellant] has a tendency for violence based upon him having this gun.” Tr. 508, l. 3 – 509, l. 13.

The assistant solicitor argued the videos were “exceedingly probative” because, as opposed to the photograph admitted as State’s Exhibit No. 64, they show Appellant with the gun. The videos also show Appellant “utilizing the laser sight attached to the gun.” The solicitor maintained the evidence corroborated Micheal Allen’s testimony, including the “very specific features” of the gun he described. Lastly, she asserted the videos had nothing “to do with character evidence” and she was unable to “decipher those lyrics.” Tr. 509, l. 16 – 510, l. 21.

After viewing the videos, the court ruled the exhibit was admissible. The court found the evidence was “more probative than prejudicial” because the videos corroborate Micheal Allen’s testimony regarding the description of the gun the perpetrator was holding. The court further determined the videos are probative of a material issue . . . other than character, and they’re offered for a purpose other than for non-propensity [sic] purposes.” However, the court ordered the state to mute the videos when publishing the exhibit to the jury to avoid any prejudice to Appellant from the rap lyrics. Tr. 514, l. 9 – 515, l. 10.

## **Discussion**

The trial court abused its discretion by admitting State’s Exhibit No. 65, which contained four videos where Appellant is seen waving a firearm and repeatedly pointing the firearm at the camera. The evidence should have been excluded pursuant to Rule 403, SCRE, because any probative value of the videos was substantially outweighed by the danger of unfair prejudice. Additionally, the evidence constituted bad character evidence in violation of Rule 404, SCRE.

Pursuant to the Rules of Evidence, all relevant evidence is generally admissible. Rule 402, SCRE. However, even relevant evidence must be excluded if its probative value is

substantially outweighed by the danger of unfair prejudice. Rule 403, SCRE; See State v. Orozco, 392 S.C. 212, 218, 708 S.E.2d 227, 230 (Ct. App. 2011). A determination on the admissibility of relevant evidence requires consideration of the evidence's probative value, the danger of unfair prejudice posed by the evidence, and the balancing of those two.

The starting point for analyzing evidence under Rule 403 is determining the probative value of the evidence offered. "Probative means tending to prove or disprove." State v. Gray, 408 S.C. 601, 609, 759 S.E.2d 160, 165 (Ct. App. 2014) (quoting Black's Law Dictionary 1323 (9th ed.2009) (internal quotation marks omitted). "Probative value is the measure of the importance of that tendency to the outcome of a case. It is the weight that a piece of relevant evidence will carry in helping the trier of fact decide the issues." Id. at 610, 759 S.E.2d at 165. The probative value of evidence is directly related to the how important that evidence is in assisting the jury in rendering a verdict. Id. Thus, when analyzing the probative value of evidence, the court must consider the importance of the evidence as it relates to the issues presented in the case. State v. Lee, 399 S.C. 521, 528, 732 S.E.2d 225, 228 (Ct. App. 2012).

After determining the probative value of the evidence, the court must next evaluate the danger of unfair prejudice presented by the evidence. "The determination of prejudice must be based on the entire record and the result will generally turn on the facts of each case." State v. Wilson, 345 S.C. 1, 7, 545 S.E.2d 827, 830 (2001). "Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest a decision on an improper basis." State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998) (quoting United States v. Bonds, 12 F.3d 540, 567 (6th Cir. 1993)) (internal quotation marks omitted). According to the United States Supreme Court, "the term 'unfair prejudice,' as to a criminal defendant, speaks to the capacity of some concededly

relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged.” Old Chief v. United States, 519 U.S. 172, 180 (1997). “Rule 403 only requires suppression of evidence that results in unfair prejudice – prejudice that damages an opponent for reasons other than its probative value, for instance, an appeal to emotion.” United States v. Mohr, 318 F.3d 613, 619-620 (4th Cir. 2003); See also State v. Orozco, 392 S.C. 212, 218, 708 S.E.2d 227, 230 (Ct. App. 2011); State v. Cheeseboro, 346 S.C. 526, 547, 552 S.E.2d 300, 311 (2001).

“When juxtaposing the prejudicial effect against the probative value, the determination must be based on the entire record and will turn on the facts of each case.” State v. Lyles, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008). Only after balancing the probative value and the danger of unfair prejudice may the court determine if the danger of unfair prejudice outweighs the probative value of the proffered evidence as required by Rule 403, SCRE.

Here, the videos admitted as State’s Exhibit No. 65 had little probative value. Admittedly, the videos show Appellant in possession of a red firearm with a laser sight which matches the general description of the firearm Allen maintained one of the perpetrators was holding. However, this minimal probative value was lessened by the admission of State’s Exhibit’s No. 64, the photograph of Appellant’s girlfriend with the same firearm, and the girlfriend’s testimony that Appellant possessed the firearm shown in the photograph. Additionally, this minimal probative value was substantially outweighed by the danger of unfair prejudice to Appellant. The videos show Appellant waving the gun and repeatedly pointing the gun at the camera in a brazen manner. Appellant’s conduct in the video is disturbing and reflects poorly on his character. Moreover, the state undoubtedly sought to appeal to the jury’s emotions given the fact that the state sought to admit *four* videos of Appellant waving and pointing the firearm. The undue prejudice to Appellant

could have been lessened by merely admitting a still shot from one of the videos showing Appellant in possession of the gun. Accordingly, the videos should have been excluded because any probative value of the evidence was substantially outweighed by the danger of unfair prejudice.

Additionally, the videos should have been excluded pursuant to Rule 404(a), SCRE, because the evidence constituted bad character evidence. “Character evidence is not admissible to prove the accused possesses a criminal character or has a propensity to commit the crime with which he is charged.” State v. Brown, 344 S.C. 70, 73, 543 S.E.2d 552, 554 (2001) (citing State v. Nelson, 331 S.C. 1, 501 S.E.2d 716 (1998)). Rule 404(a) states the general rule that “evidence of a person’s character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion.”

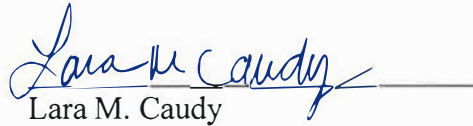
Again, the videos admitted as State’s Exhibit No. 65, showed Appellant brazenly waving a gun and pointing the gun at the camera. Appellant’s behavior in the videos is troubling and reflected poorly on his character. More specifically, the evidence demonstrated Appellant’s character for violence and suggested to the jury that Appellant had the propensity to commit the charged offenses.

Respectfully, this Court should hold the trial court abused its discretion by admitting the videos marked as State’s Exhibit No. 65, reverse Appellant’s convictions, and remand for a new trial.

**CONCLUSION**

Based on the foregoing argument, Appellant respectfully requests this Court reverse his convictions and sentence and remand for a new trial.

Respectfully submitted,

A handwritten signature in blue ink that reads "Lara M. Caudy". The signature is written in a cursive style and is positioned above a horizontal line.

Lara M. Caudy  
Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of April, 2025.