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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Darlington County
The Honorable R. Kirk Griffin, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

DARIUS GRANT DICKEY,

APPELLANT.

Appellate Case No. 2024-000145

FINAL BRIEF OF RESPONDENT

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II. Whether the trial court erred by quashing the jury panel, where defense counsel struck two jurors who both had conservative demeanors and one declined an age exemption from jury service, since there were race-neutral and gender-neutral reasons?

III. Whether the trial court erred in admitting a body-camera recording which captured the immediate aftermath of the shooting,

   A. Where any probative value of the evidence was substantially outweighed by the danger of unfair prejudice, since the evidence should have been excluded pursuant to Rule 403, SCRE?

   B. Where any probative value of the evidence was substantially outweighed by considerations of needless presentation of cumulative evidence, since the recording should have been excluded pursuant to Rule 403, SCRE?

STATEMENT OF THE CASE

Darius Grant Dickey (hereinafter "Appellant") was indicted on June 11, 2020, by a Darlington County Grand Jury for murder, two counts of assault and battery of a high and aggravated nature (ABHAN), unlawful carrying of a pistol, and possession of a weapon during the commission of a violent crime. (2020-GS-16-0896, 0889, 0890, 0895, and 0892). Appellant was later indicted on September 7, 2023, for the additional charge of attempted murder originating from the same incident. (2023-GS-16-1402). Appellant proceeded to a jury trial on January 22-25, 2024, before the Honorable R. Kirk Griffin. (R. p. 1, p. 7-8;). The State was represented at trial by Assistant Solicitors Kernard Redmond and Monty Bell. (R. p. 1). Attorneys Marianna White, Jamie Scruggs, and Nathan Scales represented Appellant. (R. p. 1). At the conclusion of trial, the jury found Appellant guilty as indicted. (R. p. 532-535). Appellant was sentenced to life without parole for the murder and attempted murder convictions. (R. p. 539-540). The trial court sentenced Appellant to 20 years' imprisonment for each ABHAN conviction, 1 year for the unlawful carrying conviction, and no sentence for the possession charge, given his existing LWOP sentences. (R. p. 540-541). This appeal now follows.

STANDARD OF REVIEW

"An appellate court will not reverse the trial judge's decision regarding jury charges absent an abuse of discretion." *State v. Santiago*, 370 S.C. 153, 159, 634 S.E.2d 23, 26 (Ct. App. 2006). A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied. *State v. Wharton*, 381 S.C. 209, 213, 672 S.E.2d 786, 788 (2009). Generally, the trial judge is required to charge only the current and correct law of South Carolina." *State v. Adkins*, 353 S.C. 312, 317, 577 S.E.2d 460, 463 (Ct. App. 2003). "In reviewing jury charges for error, we must consider the court's jury charge as a whole in light of the evidence and issues presented at trial." *Id*. "A jury charge is correct if, when the charge is read as a whole,

it contains the correct definition and adequately covers the law." *Id*. "A jury charge which is substantially correct and covers the law does not require reversal." *State v. Brandt*, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (citing *State v. Foust*, 325 S.C. 12, 479 S.E.2d 50 (1996)). 'The law to be charged must be determined from the evidence presented at trial.' *Brandt*, at 549, 713 S.E.2d at 603 (2011) (citing *State v. Knoten*, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). "If there is any evidence to support a charge, the trial court should grant the request." *Id*. (citing *State v. Williams*, 367 S.C. 192, 195, 624 S.E.2d 443, 445 (Ct. App. 2005)). "Errors, including erroneous jury instructions, are subject to harmless error analysis." S*tate v. Belcher*, 385 S.C. 597, 611, 685 S.E.2d 802, 809 (2009).

"In the typical appeal from the granting or denial of a *Batson* motion, the appellate courts give deference to the findings of the trial court and apply a clearly erroneous standard." *State v. Cochran*, 369 S.C. 308, 312, 631 S.E.2d 294, 297 (Ct. App. 2006) (citing *State v. Shuler*, 344 S.C. 604, 615, 545 S.E.2d 805, 810 (2001)). Adherence to the mandated procedure for conducting a *Batson* hearing is a question of law and such is reviewed *de novo*. *Id*.

"The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice." *State v. Collins*, 409 S.C. 524, 529-30, 763 S.E.2d 22, 25 (2014) (citing *State v. Wise*, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004)). The trial judge is given broad discretion in ruling on questions concerning the relevancy and admissibility of evidence, and his decision will be reversed only if there is a clear abuse of discretion. *State v. Alexander*, 303 S.C. 377, 380, 401 S.E.2d 146, 148 (1991); *State v. Clasby*, 385 S.C. 148, 682 S.E.2d 892 (2009). "A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances." *Collins*, 409 S.C. at 534, 763

S.E.2d at 28 (2014) (quoting *State v. Adams,* 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct.App.2003)). An appellate court "review[s] a trial court's decision regarding Rule 403 pursuant to the abuse of discretion standard and is obligated to give great deference to the trial court's judgment." *Id.*

STATEMENT OF FACTS

The Crime

In the early morning hours of January 26, 2020, Appellant visited a night club called "Mac's Lounge" in Hartsville, South Carolina. He was accompanied by his friend DiCaprio Collins (hereinafter "DiCaprio") and his cousin, Zyrig Thomas (hereinafter "Zyrig"). While at the club, a fight broke out between DiCaprio and another patron at the club, Davijon McCall (hereinafter "McCall"). Appellant joined in on the fight against McCall and gunfire soon ensued. In the wake of the shootout, six individuals were shot. Victims Leonard Sweetenbrug, Ivan Granados, and Michael Grider were injured by gunfire. (R. p. 125-126). Victims Garrett Bakhsh, DiCaprio, and Brian Robinson died as a result of their gunshot wounds. Appellant and Zyrig both fled the scene as police were arriving and assessing the chaos of the scene.

The evidence and testimony presented at trial demonstrated the following facts:

Arrival at Mac's Lounge

Zyrig Thomas, DiCaprio Collins, and Appellant drove to Mac's Lounge in the early morning hours of January 26, 2020. (R. p. 358-359). Appellant was driving the group in a gray car, but Zyrig could not recall the make and model. (R. p. 360). They entered the club and were walking around when McCall arrived. (R. p. 360). Witness Angelena Deason was also at the club that night. She knew DiCaprio and saw him arrive in a silver car being driven by Appellant. (R. p. 244; 248). Shortly after, she was standing with her friends at the back wall of the club. As Appellant walked past her, she watched him pull out a gun, cock it back, and put it back into his

waistband. She noted that when Appellant put the gun back into his waistband, he did so more shallowly than when he had retrieved it. Moments later she heard the gunfire begin. (R. p. 250-251; 270). However, she did not see Appellant actually fire a gun. Defense counsel crossed Angelena as well as officer Curtis regarding Angelena's reference to "people" shooting, as opposed to Appellant. (R. p. 148-149; 267). Witness A.J. Wright testified similarly, indicating that he had seen Appellant with his hand in his pants just before the fighting, with the shooting coming soon after. After the shooting ended, he saw Appellant in possession of a gun. (R. p. 342-346).

The Fight and the Shooting

According to Zyrig[1], McCall was by himself and "DiCaprio started to fight with [McCall]" while at the pool tables.[2] (R. p. 361). The fight escalated, and when the gunfight was over, both he and Appellant were standing over DiCaprio's body, DiCaprio was dead, and they both then fled separately without waiting for police. (R. p. 365-366).

Zyrig initially stated that McCall killed DiCaprio (aka "Capo"). However, he acknowledged that, using Facebook, he identified someone else to police as having killed DiCaprio[3]. Zyrig then provided contrary testimony that he did not know the person he identified,

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[1] He is at times referred to as "Zyriq" by other witnesses. Respondent is uncertain which is correct, but the transcript lists Mr. Thomas's name as being "Zyrig Thomas" in the witness list.

[2] At this point Zyrig became evasive and/or claimed that he could not recall further events of the night. Instead, his statement to police provided much of the explanation of the events that followed. He claimed he could not recall telling police that Appellant got involved in the fight and grabbed McCall. He could not recall telling police that Appellant started shooting after DiCaprio got shot. Lastly, he claimed he could not recall telling police that as the two were shooting, Appellant was moving backward toward the back patio and McCall was moving backward toward the front door. (R. p. 362-364).

[3] Investigator Hause noted on cross-examination that the individual that Zyrig showed officers from Facebook was not McCall. The person was later identified as Leonard Sweetenburg. Zyrig informed police that DiCaprio fought with Sweetenburg at the club as well, and that Sweetenburg ultimately shot DiCaprio. (R. p. 383; 405). The investigation revealed that Sweetenburg and McCall were friends and had arrived at the club together. (R. p. 408). Investigator Hause also testified that he "may have remember[ed] hearing something like that" when asked

and that they were simply a Facebook friend. He then claimed that he did not see this person with a gun, but that the individual was at the bar that night. He "ain't see anybody shoot nobody." (R. p. 369-370). His testimony at trial was that he did not know who shot DiCaprio but knew that it was not Appellant. (R. p. 370).

Investigator Hause testified that in meeting with Zyrig, he revealed "that Capo and [McCall] we're (sic) about to get into a fight or they had started fighting. And that [Appellant] was coming up and he grabbed [McCall] from the back. And as he grabbed [McCall] from the back that's when he pulled his gun, [Appellant] pulled his gun out and started shooting and exited toward the back." (R. p. 383). He then stated that "[McCall's] arm comes up and to shoot and when he does that [Appellant] is backing up as well and pulls his gun and starts to shooting back while he he's going back towards the Poole Street." He clarified that "toward Poole Street" would be toward the deck/patio area in the bar. In contrast, McCall was going backwards in the opposite direction of Appellant, toward the front entry to the club. (R. p. 384).

Mr. Ivan Granados was sitting at the bar area looking toward the stage area. He was about to proceed to the patio area. However, he never had the opportunity to do so. Fighting broke out and then the shooting started. Mr. Granados testified that when the shooting began it appeared as though it was being fired toward the patio area; he attempted to flee out the front door of the club and was ultimately struck by gunfire. (State's Ex. 86, p. 226; R. p. 218; 222). Mr. Granados also testified to seeing Mr. Bakhsh being struck in the head by a gunshot toward the front entry of the bar. (R. p. 221; 108).

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about whether someone shot a handgun up in the air after the shooting inside the club began. He also agreed that there were additional reports of gunfire in the parking lot of Mac's Lounge. (R. p. 397-398).

After the shooting, Appellant went to DiCaprio, flipped him over and slapped him in the face (presumably to try and revive him), but DiCaprio was dead and they chose to leave.[4] (R. p. 385).

Subsequent Investigation

After the shootout had ended, Angelena Deason saw officer Justin Cottingham responding to the scene. She frantically informed him that the suspect was getting away and pointed to the silver car. Officer Cottingham saw the car in question "kind of creeping in the parking lot" with its lights off, and that the vehicle had out of state tags from Florida. He pursued the vehicle and ultimately found it parked on Washington Street. (R. p. 431-432). Officer Cottingham got out to inspect the vehicle and was able to see spent shell casings in plain sight. While there, an individual approached him. The individual denied being the owner of the vehicle but said that this was his home and that the officer needed to leave. The testimony of Officer Brandon Pate, with the use of surveillance footage, demonstrated that the individual in question was Appellant. However, Officer Cottingham only had information on the vehicle at the time, not the suspect. He therefore stayed with the vehicle until backup arrived. (R. p. 433-435).

Investigator Hause testified that he learned at the crime scene that Appellant was one of the shooters. (R. p. 375). Cynthia Dickey had called to report her vehicle being stolen. Investigator Hause was only briefly at Mac's Lounge after the shooting, but upon learning of Appellant's involvement and his mother's alleged stolen car, he responded to Cynthia's home in Clyburn to further investigate. (R. p. 375). He learned from Ms. Dickey that she had been in a car accident and had obtained the silver Nissan Versa as a rental. The rental car was of interest, as it was

[4] Investigator Hause testified that some time after providing his statement to police, Zyrig attempted to recant his statement. Zyrig looked nervous and scared at the time. (R. p. 389).

believed to be the car that Appellant used to leave the scene of the crime. (R. p. 375-376). He facilitated Ms. Dickey calling Appellant while he was present. He explained to Appellant that he needed to speak with him about what happened, and he wished to meet with Appellant to do so. Appellant refused, stating "no, you're gonna lock me up." (R. p. 377). This effort was repeated, but Appellant continued to refuse. (R. p. 377-378). During the phone calls, Appellant revealed to Investigator Hause that he, DiCaprio, and Zyriq (Zyrig) were together at the club. This was the first Investigator Hause had learned of Zyrig's accompaniment of Appellant and DiCaprio. (R. p. 378). Appellant explained that they had gone to Mac's and that there had been a fight and a shooting, after which he ran out the back and fled the scene by running home. Appellant did not indicate that he had been involved in the fight or shooting but told Investigator Hause that his mother's car had been stolen from Mac's Lounge. Though Appellant was believed to have come home briefly, Appellant was notably not home during Investigator Hause's visit. (R. p. 378-380).

Once Investigator Hause left, he returned to the station and made efforts to proceed to Zyrig's home, believing that Appellant might be there hiding. (R. p. 381-382). Investigator Hause met with and spoke with Zyrig, which ultimately lead to Zyrig being taken to the police station, but Appellant was not at Zyrig's home. (R. p. 382).

Both Appellant and McCall were apprehended in other jurisdictions. Appellant was later arrested in Sumter County. Five handguns were recovered from the residence where Appellant was apprehended. However, none were matched to the ammunition evidence recovered from the club or the Nissan Versa. (R. p. 387; 404). McCall was later apprehended in Durham, North Carolina, and police recovered a Glock 43 9mm firearm during McCall's arrest. (R. p. 387; 400). After his arrest, McCall gave police a statement. The statement led to McCall being charged with

the murder of DiCaprio and Robinson, and it provided Investigator Hause information that furthered the investigation. (R. p. 390).

Evidence and Forensics

The Nissan Versa was recovered and processed for evidence by law enforcement. (R. p. 402-403). A total of seven .40 caliber casings were recovered from the front passenger floorboard, driver's floorboard, and rear passenger floorboard of the vehicle. (R. p. 157-159). Five 9mm shell casings were recovered from the parking lot, as well as one unfired round of ammunition. (R. p. 179; p. 416). Inside the club, multiple cartridges and projectiles were recovered. The forensic analysis of the recovered cartridges and projectiles demonstrated that two types of ammunition were fired, with some projectile fragments being unsuitable for matching. The 9-millimeter cartridges found at the scene all matched to the Glock 43 firearm (State's Ex. 80) that was recovered during McCall's arrest. Also, the projectiles recovered from the autopsies of both DiCaprio and Robinson were matched to McCall's weapon. (R. p. 314-319). The .40 caliber Smith and Wesson cartridges recovered from the club matched those found inside the Nissan Versa; all were found to have been fired by the same gun.[5] (R. p. 322-326). The bullet that struck victim Bakhsh was not suitable for matching due to insufficient markings, the available markings were also insufficient to eliminate McCall's firearm as having fired the round. (R. p. 320-321; 333). However, in the same area where Mr. Bakhsh was struck – the front entry way – there was another recovered projectile: Item 2. The ballistic analysis of this projectile demonstrated that it *could not* have been fired by McCall's weapon. (R. p. 321; State's Exhibit 86, p. 543).

[5] The unfired round of ammunition found in the parking lot was also a .40 caliber Smith and Wesson bullet.

ARGUMENT

I. Appellant's reliance upon a defense of others theory necessitated the charge of accomplice liability, given that Appellant anticipated the need for gun violence but permitted DiCaprio to initiate the fight with McCall.

The trial court's inclusion of an accomplice liability charge was appropriate. Among the various defenses presented at trial, Appellant requested a charge for the defense of others and argued such before the jury. The accomplice liability charge was warranted as it combats this defense with the reasonable inference that Appellant was not lawfully defending DiCaprio, but was joined in a mutually agreed upon assault with the anticipation of gun violence. The charge rightfully informed the jury that the law does not permit the defense's premise that because Appellant did not personally instigate gun violence he was justified in using gun violence to defend a friend, when the evidence demonstrates that both DiCaprio and Appellant were acting in concert in bringing about the conflict.

"'Under the hand of one is the hand of all theory [of accomplice liability], one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose.'" *State v. Harry*, 420 S.C. 290, 299, 803 S.E.2d 272, 276–77 (2017) (quoting *State v. Condrey*, 349 S.C. 184, 194, 562 S.E.2d 320, 324 (Ct. App. 2002)). Accomplice liability may be proven by circumstantial evidence, and the State need not prove a formal or expressed agreement in order to demonstrate that two or more individuals joined to achieve an illegal purpose. *State v. Campbell*, 443 S.C. 182, 193, 904 S.E.2d 441, 447 (2024). "If there is any evidence to warrant a jury instruction, a trial court must, upon request, give the instruction." *State v. Smith*, 391 S.C. 408, 412, 706 S.E.2d 12, 14 (2011).

Unlike most accomplice liability arguments, the necessity of the charge in this case is not linked solely to the question of whether Appellant is guilty as the principle or the accomplice. Instead, it is necessary to demonstrate the shared illegal purpose, and that one actor's instigation

of violence renders the other criminally liable for perpetuating that violence, as opposed to finding legal exculpation under the guise of defense of others.

Appellant's argument for defense of others suggests that DiCaprio started a fist fight with McCall, McCall responded by escalating the fight with the use of gunfire, and Appellant defended DiCaprio by responding with deadly force of his own and lacked a malicious motive for violence. While the State's evidence strongly demonstrates the weakness of such an argument, the presentation of such an argument to the jury rendered an accomplice liability charge appropriate and necessary.[6] [7] The jury needed to be informed that if DiCaprio and Appellant had joined to accomplish an illegal purpose of assaulting McCall, then the instigation of violence by DiCaprio is imbued upon Appellant in negating the defense that he was merely defending his friend by returning fire. Stated another way, even though Appellant did not personally bring about the difficulty that led to the deadly violence, his joining with DiCaprio as an accomplice for the purpose of violence renders him unable to claim a defense of others theory. This is especially so

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[6] The State did not pursue a theory of the case that there was an unidentified shooter in league with Appellant, for which Appellant is culpable under an accomplice liability theory. Nevertheless, Appellant's closing arguments presented issues and defenses that inferred such a possibility and placed the issue in the minds of the jury. First, the defense's closing argument begins with an emphasis on Angelena's use of the term "*people*" shooting, and that she did not see Appellant actually fire his gun. The defense does not attempt to claim who these "people" are in his arguments to the jury. (R. p. 481). Second, the defense followed that argument by noting that the additional .40 caliber cartridges were found, not in the driver's floorboard *where Appellant was driving*, but in the passenger side floorboard and back seat. (R. p. 486-487). Third, the defense then argued that none of the five different handguns recovered during Appellant's arrest were matched to the ammunition fired at the scene of the crime and that there was no DNA or fingerprint evidence linking Appellant to the fired ammunition at the crime scene. (R. p. 487). Fourth, the defense then argued that no one had provided a motive for Appellant to be shooting at the club that night. (R. p. 490-491).

[7] Appellant limiting his analysis solely to the possibility that McCall and Appellant were accomplices in a mutual combat scenario, ignores all other avenues in which the evidence supported the accomplice liability charge (*infra*), and it serves as nothing more than a strawman for Appellant to knock down.

when the evidence demonstrated that Appellant *anticipated* the need for his firearm, as borne out by the testimony of Angelena Deason and A.J. Wright. The accomplice liability charge is necessary because, in this situation, it prevents Appellant from avoiding a murder charge simply by joining his friend in an assault, *baiting* McCall into a shootout, and receiving an opportunity to try and shoot someone he wanted to harm to begin with. A defendant claiming he fired second and did not start the fight does not absolve himself of murder if he joined in an illegal plan to bring about the dispute and clearly anticipated the use of firearms.

Appellant's efforts in closing to diffuse the above possibility add credence to the need for the charge. Appellant attempts to assert that there is no evidence of individuals "acting in concert," to commit a crime (an assertion that is soundly defeated by the circumstantial evidence of the case). However, after making that argument, defense counsel then identified the basis for concerted actions: assault and battery against McCall. Appellant then went one level deeper in attempting to argue that a shooting following a "punching" was not a natural consequence under the law. Though Appellant attempted to downplay the sufficiency of the assault and battery angle as sufficient to warrant consideration of the accomplice liability charge, he consequently put into the minds of the jurors the very factual dispute that warranted the charge in the first place, and he inadvertently conceded that the "any evidence" standard had been met.

The *only* way a jury could know how to evaluate the collaborative actions of both DiCaprio and Appellant in the context of a defense of others theory, is to be charged on accomplice liability as well. While the State ultimately did not obtain a mutual combat instruction in tandem with accomplice liability, the circumstances of this case arising out of two combating sides, demonstrated the need for the charge. The record here clearly satisfied the any evidence standard.

Lastly, while Respondent argues that the charge was appropriate, Appellant also fails to demonstrate resulting prejudice. "In making a harmless error analysis, our inquiry is not what the verdict would have been had the jury been given the correct charge, but whether the erroneous charge contributed to the verdict rendered." *Campbell*, 443 S.C. at 191, 904 S.E.2d at 445-46 (2024) (quoting *State v. Kerr*, 330 S.C. 132, 145, 498 S.E.2d 212, 218 (Ct. App. 1998). Here, the jury also found that Appellant was guilty of attempted murder of McCall. That verdict demonstrates that they found Appellant to have both the specific intent to kill McCall and that he had taken requisite actions to further that intent by firing his weapon. The accomplice liability charge therefore could not have erroneously contributed to the verdict for murder.

II. The trial court followed the established *Batson* procedures, was correct to find that Appellant relied upon a vague, ill-defined, and ultimately pretextual basis for striking jurors, and Appellant cannot satisfy his burden for demonstrating prejudice because none of the stricken jurors were seated on the second jury.

Issue as it was presented at trial

Following the voir dire of the jury panel, the parties proceed to call, seat, or strike jurors for the case. The following table represents the prospective jurors as they were called, their race and gender, the ultimate decision of the parties as to whether to seat or excuse the juror (R. p. 54-64), and the reason provided if the strike was disputed:

1.	#189 Rickya Washington,	black female	seated	
2.	#120 Beverly McCutcheon,	black female	seated	
3.	#179 Lucas Tolson,	white male	excused by defense	former SCDC employee
4.	#49 Arnold Floyd,	white male	excused by defense	
5.	#20 Raenell Brooks,	white female	excused by defense	disregard of age exemption & conservative demeanor
6.	#51 Betty Ford,	black female	seated	
7.	#52 Tychiana Ford,	black female	seated	
8.	#71 Kenneth Hamilton,	black male	excused by the State	
9.	#37 Leslie Dority,	white female	seated	
10.	#111 Danielle Lombardi,	white female	excused by defense	
11.	#81 Chelsea Hopkins,	white female	excused by defense	
12.	#59 Teresa Gainey,	white female	excused by defense	

13.	#62 Beverly Grant, [8]	black female	excused by defense	previous knowledge of the case [9]
14.	#73 Jennifer Hardee,	white female	excused by defense	
15.	#181 Lenora Toney,	black female	seated	
16.	#57 Kathryn Gainey,	white female	excused by the State	
17.	#60 Melvin Gale	black male	seated	
18.	#150 Victoria Robinson,	black female	seated	
19.	#83 Hermena Hough,	black female	seated	
20.	#170 Jessica Stephens,	black female	seated	
21.	#100 Susan Kelley,	white female	seated	
22.	#152 Melinda Rolfe,	white female	excused by defense	displayed conservative demeanor
23.	#68 Terry Graham,	black male	seated	
24.	(ALT) #193 Andrea Williams,	black female	seated	
25.	(ALT) #149 Tiana Robinson,	black female	excused by the State	
26.	(ALT) #58 Robert Gainey,	white male	seated	
27.	(ALT) #109 James Lee,	white male	excused by defense	juror allegedly glared at defendant
28.	(ALT) #128 William Moore,	white male	excused by defense	veteran; alleged bias due to State's primary witness being active duty
29.	(ALT) #106 Daniel Kovach,	white male	seated [10]	

The end result of the jury selection was that there were two Caucasian jurors and ten African-American jurors, two of whom were male jurors and ten were female jurors. No Caucasian males were selected for the Appellant's jury. Appellant used all twelve strikes, eleven of which were for Caucasian jurors or alternate jurors. The only African American juror struck by Appellant was juror #62, Ms. Beverly Gant, a black female who informed the court that she had prior knowledge of this case due to living in Hartsville and communications with the family of an alleged victim. (R. p. 27-28).

The assistant solicitor acknowledged that a number of the strikes used by the defense that might otherwise raise suspicions, may relate simply to innocuous matters that came out during the voir dire. (R. p. 66). However, after review, he noted that the defense struck at least eight white

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[8] Juror #62, Ms. Beverly *Grant*, is later identified as "juror #62, Ms. Beverly *Gant*." This is likely merely a typographical error, or an error in hearing the pronunciation of her name. (R. p. 81). Of note, Ms. Gant was excused by the defense during the first jury selection, with the record demonstrating that she was familiar with the case through a victim's family. Despite having a strike remaining, Appellant seated Ms. Gant when she was called for the second jury, and Appellant later used this last strike to excuse juror #109, James Lee, a white male.

[9] The State did not challenge this strike. However, as it was Appellant's only strike of a juror of African-American descent, the reason for the strike is relevant.

[10] Appellant was out of strikes at this point and did not have a basis to excuse the juror for cause.

jurors and two more white alternate jurors. The assistant solicitor then challenged the strikes used on five jurors and asked that Appellant provide race neutral reasons for their strikes. These included jurors numbered 179, 20, 152, 109, and 128. (R. p. 66-67).

The trial court then proceed to ask Appellant about each disputed strike. Appellant indicated that juror #179 was struck because he was "a former SCDC employee that, obviously, raises concerns to us." (R. p. 68). Appellant asserted that juror #20 "had an age exemption. She chose to stay and I believe she had quite a conservative demeanor and, therefore, chose to exercise the strike. (R. p. 68, lines 6-9). Appellant later added: "we did not excuse her due to her age, We viewed the fact that she did have an exemption yet chose to stay, um, as just a factor along with her demeanor." (R. p. 70, line 23 through p. 71, line 4). Assistant Solicitor Redmond then responded that *Batson* covers race, gender, but also age. He then moved to redraw the panel. (R. p. 68). The trial court acknowledged the argument but sought to have all of the contested strikes addressed by the defense before moving forward. Appellant then addressed juror #152 and stated that "it appeared that juror number 152 displayed conservative demeanor, we, therefore, chose to exercise the strike." (R. p. 68, line 23 through p. 69, line 1). The Assistant Solicitor argued in response that the reason provided was not a race-neutral reason, noting that he was not even sure what the definition of "conservative demeanor" even means. He labeled it "very broad" and argued that it "goes right to the heart of pretext. I mean, you can exercise pretext pretty regularly if that rationale was allowed to be upheld so we would ask also as it relates to that jur[or]." He then added that he had missed the fact that juror #179 was a former SCDC employee, and he therefore withdrew his objection to defense's strike. (R. p. 69, lines 2-14).

The trial court then asked about the alternates, jurors 109 and 128. Appellant alleged that juror #109 "glared quite severely at the defendant and I, therefore, chose to exercise the strike."

Regarding juror 128, Appellant asserted that "one of the State's main witnesses is either actively serving or a veteran, um of some branch of the military. This gentleman was also indicated that he was a veteran and we had concerns of bias and we chose to exercise the strike." (R. p. 69, line 18 through p. 70, line 2). The assistant solicitor contested the striking of a juror on the basis of their veteran status as improper and argued that such presents a dangerous precedent. (R. p. 70).

After hearing the reasoning from the defense, and the response to that reasoning from the State, the Court found that jurors numbered 20 and 152 presented a problem. The trial court acknowledged that "demeanor can sometimes be used as a sufficient reason for a strike, but I don't know how one exhibits a conservative demeanor." He then compared such a vague explanation to potentially appropriate demeanors that would suggest that the juror did not want to serve as a juror, or something that would identify some sort of bias from the juror. However, the trial court agreed that it did not know what "conservative demeanor" means, and there was nothing provided by the defense to articulate why that conclusion was reached by the defense. The trial court agreed that such strikes were therefore pretextual in nature and granted the State's motion. (R. p. 71).

The parties proceeded to draw a new jury. In the process of drawing a new jury, the defense again used all ten strikes, and at least nine of those were for Caucasian jurors.[11] Five of the jurors from the original jury were called and seated again, but none of these jurors were disputed under *Batson*. The new jury was comprised of seven African Americans and five Caucasians, with nine of the jurors being female. Of the jurors previously addressed in the *Batson* hearing, #179 and #109 were called and struck again by the defense *without* objection. Juror #152, Melinda Rolfe, who was found to be inappropriately struck from the first jury, was called and seated *as an*

[11] Juror #18 Gregory Brigman's was excused by the defense, but his race was not stated for the record by the court reporter. The defense did not exercise any strikes on alternate jurors.

alternate for the second jury. The record is clear that none of the three alternates were used and *Ms. Rolfe was excused as an alternate* when the jury exited the courtroom after the conclusion of jury instructions. (R. p. 518-519).

Discussion

The trial court conducted the *Batson* hearing precisely as is required, following each of the three steps in the *Batson* review. After hearing the arguments of counsel, the court found that Appellant had failed to present a clear and specific race-neutral basis for striking jurors #20 and #152, and instead relied on a pretextual explanation. This finding was not clearly erroneous in light of the record. In fact, the holding is well supported by the circumstances, the impropriety of Appellant's reliance upon "conservative demeanor" as the reasoning for the strike, and the lack of explanation for such a term. Additionally, as no disputed juror served on the second jury, Appellant cannot demonstrate prejudice warranting reversal.

In *Batson v. Kentucky,* 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986), the United States Supreme Court set forth a three-step process for evaluating discriminatory peremptory challenges that violate the Equal Protection Clause. "First, the opponent of the peremptory challenge must make a prima facie showing that the challenge was based on race." *State v. Giles*, 407 S.C. 14, 18, 754 S.E.2d 261, 263 (2014). If the opponent's showing is sufficient, the second step requires the proponent of the challenge to provide a race-neutral explanation for the challenge. *Id.* "In *Purkett*, the Court clarified that the issue at that step is the facial validity of the explanation provided by the proponent of the strike, and the explanation need not be persuasive or even plausible. The Court went so far as to state the reason does not have to make sense, and even a silly or superstitious reason may suffice because it is not until the third step of the *Batson* process that the persuasiveness of the explanation becomes relevant." *Id*., (citing *Purkett v. Elem*, 514 U.S.

765, 115 S.Ct. 1769, 131 L.Ed.2d 834 (1995)). In 2005, the Supreme Court clarified that at the second stage of the *Batson* process a proponent of a strike must "give a clear and reasonably specific explanation of his legitimate reasons for exercising the challenge." *Id*., (quoting *Miller–El v. Dretke*, 545 U.S. 231, 125 S.Ct. 2317, 162 L.Ed.2d 196 (2005)). The South Carolina Supreme Court then noted that the process *can* end with a finding of *Batson* error following the second stage, if "the explanation provided is not sufficiently clear and specific to provide a factual basis that courts can review for legitimacy." *Id.* The court then cited various examples from other jurisdictions where insufficient pretextual responses included assertions such as: 1) just not liking the juror, 2) just did not get a good feel from the juror, 3) reliance upon body language for six consecutive female jurors, and 4) gut feelings absent explanation. *Id*. Facially discriminatory reasons have included striking a juror, not because they were white, but because counsel considered them a "redneck." *Payton v. Kearse*, 329 S.C. 51, 56, 495 S.E.2d 205, 208 (1998). If the proponent provides a sufficiently clear and specific basis for the strike that is race and gender-neutral, the third step requires that the opponent of the strike prove purposeful discrimination. *Giles*, 407 S.C. at 18, 754 S.E.2d at 263.

The State provided responses to the alleged "conservative demeanor" reasoning given by Appellant, often unsolicited by the court. However, the court's holding – that it is uncertain how one exhibits a "conservative demeanor", that it lacks any understanding of the meaning of that term, and that such is insufficient in the absence of further support or explanation from the defense of its reasoning – demonstrates that Appellant never satisfied the requirement that the reasoning be "sufficiently clear and specific" so as to provide a factual basis for the court to review legitimacy. His explanation was vague and generalized, such that there is no way for a subsequent

comparative analysis of similarly situated jurors to be undertaken. The court's reasoning for finding *Batson* error under step two was appropriate.

While the State argued fervently and the court subsequently agreed that the Appellant's assertion was pretextual, arguably demonstrating a venture into step three, the record also supports such a finding in light of the circumstances. Eleven out of twelve jurors excused from the first jury by the defense were white, and the only black juror excused by the defense was later seated in the second jury. This occurred despite the defense still possessing a strike and therefore an opportunity to remain consistent in their preference that a juror with previous knowledge of the case through a victim's family, was an appropriate basis for exclusion. There can be no finding of *clear error* in the court's ruling given the arguments, facts, and circumstances presented.

Additionally, *and dispositively*, a thorough review of the disputed jurors from the first draw demonstrates that *none* of these jurors were seated on the second drawn jury. *State v. Cochran*, 369 S.C. 308, 324, 631 S.E.2d 294, 303 (Ct. App. 2006) (noting that *Batson* error "is reversible only if the second jury is comprised of jurors whom the trial court erroneously prohibited the defendant from striking based on *Batson*."). "A defendant has no right to trial by any particular jury." *State v. Adams*, 322 S.C. 114, 126, 470 S.E.2d 366, 373 (1996), overruled on other grounds by *State v. Giles*, 407 S.C. 14, 754 S.E.2d 261 (2014). Ms. Rolfe was seated as an alternate only, no problems arose that required the use of alternate jurors, and she was appropriately excused prior to participating in deliberations. Existing case law is clear that any error in relation to such an alternate juror is harmless. *State v. Ford*, 334 S.C. 444, 449, 513 S.E.2d 385, 387 (Ct.App.1999); *State v. Cochran*, 369 S.C. 308, 325, 631 S.E.2d 294, 303 (Ct. App. 2006)

As such, there is no basis for clear error on the part of the trial court and no basis for prejudicial reversible error in light of the fact that no disputed jurors served on the second jury. Appellant's convictions and sentences should be affirmed.

III. The trial court did not err in admitting Officer Curtis's body-camera recording, as the evidence was neither cumulative nor substantially more prejudicial to the defendant than probative to the State's case-in-chief.

The trial court did not err in admitting the body-cam footage of Officer Curtis which displayed the immediate aftermath of the shooting that took place. Such evidence was not cumulative to the testimony offered by witnesses, as it goes to demonstrate the credibility of their assertions made at the time. Moreover, the evidence was highly probative in giving the jury a three-dimensional understanding of the bar and the placement of the injured and deceased victims so as to support the State's theory that the direction of the gunfire helps prove Appellant's guilt for the ABHAN charges and Mr. Bakhsh's murder. This factual theory is further supported by the video evidence demonstrating the contrast to McCall's murders of DiCaprio and Robinson, which were committed by shooting in the opposite direction.

The trial judge is given broad discretion in ruling on questions concerning the relevancy and admissibility of evidence, and his decision will be reversed only if there is a clear abuse of discretion. *State v. Alexander*, 303 S.C. 377, 380, 401 S.E.2d 146, 148 (1991); *State v. Clasby*, 385 S.C. 148, 682 S.E.2d 892 (2009). Generally speaking, all relevant evidence is admissible. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant. *State v. Collins*, 409 S.C. 524, 534, 763 S.E.2d 22, 27 (2014) (citing SCRE, 401 through and 403). The comparative analysis of the probative value and prejudicial effect of evidence is reversed only in exceptional circumstances, and great deference is given to the trial court's judgment. *Id*.

The disputed evidence in this matter is Officer Curtis's body-cam footage which recorded his response to the crime scene, his efforts to gain control over the scene, and the ongoings of the evacuating patrons. Appellant objected to its introduction and the footage was reviewed in-camera for consideration by the court. (R. p. 107). Officer Curtis then testified to the contents of the video, indicating the specific victims and their locations in the crime scene. (R. p. 108). On cross, Appellant revisited the distraught nature of Angelena Deason (a matter that was being simultaneously litigated for purposes of establishing her identification of Appellant as having drawn and cocked a handgun prior to the shooting as constituting an excited utterance). (R. p. 109).

After review, the court found that the video's ability to demonstrate the orientation and location of the victims at the crime scene was more probative than prejudicial. The court reasoned that this is especially so given that there was no prejudicial "narration" or commentary by Officer Curtis as to the events of the footage, and that the showing of the bodies in question did not rise to become more prejudicial than probative. The court likewise found no basis to mute the audio of the footage. The court concluded by noting that based upon his review of the totality of the evidence, the body-cam footage would be admissible. (R. p. 116-117).

This ruling was appropriate and entirely within the discretion of the trial court to render. The video footage provided the locations and orientation of the victims within the confines of the bar. This evidence was highly probative because of the State's argument that the locations of the injured and deceased victims is probative evidence of guilt as to which victims Appellant is responsible for harming. While brief glimpses of the victims can be seen during the video, they are not at all visually gruesome. Likewise, while there are obviously upset patrons, there is no basis for demonstrating that emotional patrons were unduly prejudicial in comparison to the probative value of the evidence. "Courts must often grapple with disturbing and unpleasant cases,

but that does not justify preventing essential evidence from being considered by the jury, which is charged with the solemn duty of acting as the fact-finder." *State v. Collins*, 409 S.C. 524, 535, 763 S.E.2d 22, 28 (2014). As to the question of cumulative evidence, the video footage also demonstrates the emotional state of Ms. Deason, her exact phrasing of statements she made to Officer Curtis, as well as the frequently referenced chaotic nature of the scene. The video footage is the only way to accurately convey the circumstances of the case to the jury in that regard.[12]

Reversing a Rule 403 finding by the trial court requires more than simple disagreement. It is a matter where great deference is granted to the discretion exercised by the court, and the abuse of such exists only where an error of law or a lack of evidentiary support dictated the ruling. The court clearly exercised discretion in considering the evidence and the arguments of counsel and reviewed the evidence in-camera before issuing a ruling. Appellant has failed to demonstrate any abuse of discretion and the ruling of the trial court should therefore be affirmed.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgments, convictions, and sentences of the trial court should be affirmed.

Respectfully submitted,

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[12] The preservation of the cumulative evidence argument is questionable in this matter. It is only raised in reference to the excited utterance issue. (See R. p. 113, line 20 through p. 114, line 17). Appellant argued that the witnesses are available to testify, but there is no direct articulation that the evidence should be excluded because diagrams and photographs are otherwise available

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August 5, 2025

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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Darlington County
The Honorable R. Kirk Griffin, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

DARIUS GRANT DICKEY,

APPELLANT.

Appellate Case No. 2024-000145

PROOF OF SERVICE

The undersigned certifies that pursuant to Rule 262(c)(3), SCACR and the Supreme Court Order of April 24, 2024, the Final Brief, along with the Proof of Service have been forwarded to Appellant's counsel, Joanna K. Delany, Esq., via email today, August 5, 2025 to JDelany@sccid.sc.gov, and to her assistant, Sara McInnis at SMcInnis@sccid.sc.gov.

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

This is the 5th day of August 2025.

s/W. Joseph Maye
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Brandy Rankin

From: Brandy Rankin
Sent: Tuesday, August 5, 2025 8:12 AM
To: Delany, Joanna
Cc: Mcinnis, Sara; Joe Maye
Subject: The State v. Darius Grant Dickey - Appellate Case No.
Attachments: FINAL BRIEF & Proof of Service - Complete.pdf

Dear Ms. Delany,

Please find attached the Respondent's Final Brief together with the Proof of Service. These documents will be filed with the South Carolina Court of Appeals, today, August 5, 2025, along with a copy of this email. Thanks.

Sincerely,

Brandy Rankin

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