

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable Alex Kinkaw, Circuit Court Judge

RECEIVED

AUG 18 2025

SC Court of Appeals

THE STATE,

Respondent,

V.

SEUVARRGGIO SENWUEZ RECTOR,

Appellant

Appellate Case No. 2023-001513

Prose Anders Brief of Appellant

Seuvarngio S: Rector

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STATEMENT OF ISSUE ON APPEAL

Page 1

Did trial judge err by denying Appellant's Batson motion Pursuant to Batson v. Kentucky, when State's Attorney given explanation was pretext for purposeful invidious discrimination?

Did the trial judge abuse his discretion by giving Accomplice Liability Instruction when evidence presented by State showed no scheme or plan and only one shooter?

Did the trial judge err by not allowing Appellant's to Impeach witness Abbarlee Pience pursuant to Rule 613?

Did the trial judge err by not allowing witness testimony, pursuant to rule 803 hearsay?

Statement OF THE CASE

A Greenville County grand jury indicted Appellant on July 7, 2020 for murder and kidnaping. (R. 1079-1092). His case was called to trial on September 11, 2023 before the Honorable Alex Kinlaw, Jr., and a jury (R. 17). Appellant was tried jointly with his codefendant Octavio Wright. Assistant Solicitors Jon Gregory and Walker Miller represented the state. Appellant proceeded pro se. David Cantrell served as stand by counsel for Appellant. (R. 1). Michael Brown represented codefendant Wright.

On September 15, 2023, the jury found Appellant guilty as indicted. (R. 1062, 1. 23-1063, 113. He was sentenced to forty-seven years for murder and thirty years concurrent for kidnaping. (R. 1076, 11. 6-15) This Appeal follows

STATEMENT OF FACTS

On December 26, 2018, a locomotive engineer who was running a train from Pelzer to Spartanburg noticed a man lying on the ground in the woods about twenty feet from the railroad tracks. The train had just crossed Chick Springs Road in Taylors, which is located in Greenville County. The engineer stopped the train out of concern for the individual and the train conductor went to check on the man. The conductor reported that the man appeared to be deceased. The engineer notified his dispatcher of the discovery and provided the approximate location of the body. The train then continued on its journey to Spartanburg. When the engineer finished work for the day, he asked his dispatcher if the police had found the body and was told they had not. Consequently, on his way home, the engineer stopped at the crossing, located the body again, and called the police. R. 144, l. 12 – 148, l. 10.

The deceased individual was identified as Hall Edward Eskew. His hands and feet were bound together with electrical cords and tape. R. 155, ll. 11-15. It was determined that he suffered a single gunshot wound to the back of his head. He also had a laceration on top of his head with an associated skull fracture as well as abrasions on his face. R. 206, ll. 6-12. The pathologist testified that the laceration and underlying skull fracture were consistent with being hit with a hammer or similar object. R. 209, ll. 6-23.

Eskew was reported missing by his sister, Vaughn Overman, on December 26, 2018. However, the last time Overman spoke to Eskew was on December 14, 2018 and the last activity on his iPad occurred on December 17, 2018. R. 301, l. 5 – 307, l. 19; R. 392, ll. 12-18. Overman went to Eskew's house on December 23, 2018 after a friend contacted her and indicated he had been unable to reach Eskew. Upon entering Eskew's home, Overman found

that his two safes where he stored his extensive gun and coin collections were open and mostly empty. R. 301, l. 9 – 305, l. 15.

Law enforcement investigating Eskew's death discovered that his credit card had been used on December 21, 2018 at QuikTrip (QT), a gas station and convenience store off Pleasantburg Drive in Greenville. Sergeant David Picone went to the QT and was able to view surveillance video of the transaction. The footage showed a four door, black Mercedes with a sunroof at the gas pump where the transaction was made. The vehicle had a paper tag with red lettering. A black male got out of the vehicle, pumped gas, returned to the vehicle, and then left. R. 365, l. 2 – 367, l. 19.

Law enforcement also learned that Eskew's credit card was used to book a hotel room on Expedia. The reservation was made on December 18, 2018 for a room at the Windham Super 8 Motel in Spartanburg County. The check out date was December 22, 2018. However, no one showed up for the reservation. The room was booked under the name Edward Hall and the email address provided by the renter was ggiorctor@gmail.com. R. 369, l. 1 – 370, l. 21.

On December 29, 2018, law enforcement received an anonymous tip from Crime Stoppers regarding the case. The tip provided a particular address on East Poinsett Street in Greer. On December 30, 2018, Investigator Tracy King conducted surveillance on the address. While King was parked in a church parking lot down the street from the residence, he saw a black Mercedes with a paper tag in the driveway and several individuals outside in the front yard. R. 397, l. 17 – 399, l. 23. King pulled into the driveway and spoke with the individuals in the yard, including Appellant, James Henry Busey, Abarlee Pierce, and Jimmy Green, Jr. King determined the Mercedes was consistent with the car Sergeant Picone had seen on the surveillance footage from the QT. Appellant told King that the vehicle belonged to his brother.

Green allegedly told King after Appellant left that Appellant had been driving the car. R. 403, l. 6 – 409, l. 13.

Numerous codefendants testified against Appellant and Wright, including Abarlee Pierce, Shelby Portch, Steven Sanders, and Jimmy Green, Jr. All four had been charged with various offenses related to their involvement in this case. Unsurprisingly, their testimony was often inconsistent with each other and it was apparent that each was attempting to minimize his or her own involvement. Generally, these witnesses claimed that Appellant and Jimmy Green sold cocaine to the decedent in exchange for gold, silver, or platinum coins. R. 724, l. 11 – 725, l. 19. Shortly before Christmas, the decedent came to the residence on East Poinsett Street where Green lived with his girlfriend, Abby Pierce, to buy cocaine. When the decedent arrived, Appellant, Wright, Green, Sanders, Pierce, and Portch were present. When the decedent came through the back door of the residence, Wright struck him in the head with a hammer. The decedent fell to the floor and the men began beating him and tied his hands and feet together with charging cords. Appellant, Wright, Sanders, and the decedent then left the residence in the decedent's truck. After they left, Green forced Pierce and Portch at gunpoint to clean the blood off the kitchen floor and wall with bleach. Green then disposed of the cleaning materials and the hammer. R. 439, l. 4 – 464, l. 20; R. 648, l. 16 – 663, l. 23; R. 720, l. 4 – 736, l. 24.

According to Sanders, Appellant, Wright, Sanders, and the decedent went to the decedent's house where they loaded up his guns and coins into his truck. They then drove to the railroad tracks. Sanders claimed Appellant and Wright forced the decedent to walk down the railroad tracks at gunpoint. While Sanders was in the truck, he heard a single gunshot. Appellant and Wright returned to the truck, but the decedent did not. According to Sanders, Wright had a gun both before he got out of the truck and when he returned to the truck. The

three then returned to the residence on East Poinsett Street and unloaded the guns and coins. R. 536, l. 1 – 549, l. 8. Portch, who was Wright's girlfriend, testified that Wright later told her he shot the decedent. R. 681, ll. 20-24; R. 685, ll. 1-7.

STANDARD OF REVIEW

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"Whether a Batson violation has occurred must be determined by examining the totality of facts and circumstances in the record." State v. Shuler, 344 S.C.

604, 615, 545, S.E. 2d 805, 810 (2001) "Appellate courts give the trial judges finding great deference on appeal and review the trial judges ruling with a clearly erroneous standard

"Id, A finding is clearly erroneous if is not supported by the record" Id. at 620, 545, S.E. 2d at 813

ARGUMENT

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The trial judge erred by denying Appellants Batson motion Pursuant to Batson v. Kentucky, when State Attorney given explanation was Pretext for purposeful Individual discrimination.

Relevant Facts

Attorney for defendant Octavio Wright moved pretrial for Batson motion challenging states use of peremptory strikes of six out of nine African Americans or "People of Color" in a Individual discriminatory manner. Court had a Batson motion hearing, State was allowed to give race-neutral reason for use of peremptory challenge of jurors. State's Attorney gave explanation for strikes was, Juror 52 was based off of criminal record. Juror 181 was based off criminal record.

Juror 122 states response was "as to Mr. Mansell, Your honor, as we were talking to Cocounsel, it was concerning to be honest with you and the way stared us down" (TR. pg. 69 L. 12-22)

Mr. Brown asked if that was angry black women theory?

States Attorney explanation was race had nothing to do with it that it was way perceived in the courtroom and that they sat several black females. (TR. Pg. 66 L. 1-Pg. 69 L. 22)

Court cited State v. Smalls, 336 S.C. 301 the court gave language to Smalls case this burden is usually met by showing either that the jurors of similar circumstances were seated, which the state has shown that because they seated other African-American jurors.

The Court said it was satisfied by states showing. Attorney Brown offered more jurors, Juror 169. States Attorney reason for strike was at table thought he was Hispanic or white male. It was tattoos on arms, and the Vest an the combination did not draw our Attention (TR. Pg. 70 L. 1-25)

Attorney Brown Argument was that being State new employment of junior which was supervisor in day to day capacity and tattoos, vest and tie combination as I have on, what that Illusion meant was that some type of stereotype.

State's response was that it was based off overall glance and presentation (TR pg. 69 L. 23-Pg. 71 L. 15) Attorney Brown offered junior 12% crime of dishonesty was state's reason for strike Attorney Brown offered Junior 115 Native American female State struck her based on her age 23 years old not alot of life experience for this case. (TR pg. 72 L. 1-12)

Attorney Brown rested. The Court then did it's evaluation of State's explanation. The court felt it needed help grappling - If there was any language or case law in the discussion of Babson that talks about challenging a junior because of their hair color or staring you down?

States Attorney Responded correct It was clear that on her face she did not want to be here.

Court responded, Your explanation you interpreted it - what caused you pause. The red hair or expression on her face, which one. States answer was the red hair was first, then State said that if anybody with any other type of unnatural color hair, would give him pause (TR pg. 71 L. 19 - Pg. 74 L. 25)

Court explain that it felt State's reason was shaky in terms of what they said and that Court wanted to make additional Inquiry. Attorney Brown made showing that state admitted it struck the black man because he was dressed professionally, and that State struck only Native American because she was young. (TR Pg. 74 L. 3 - Pg. 76 L. 25)

Appellant moved to join in on Babson motion of Attorney Brown, Court then moved making a finding that State presented adequate evidence to court and provided a nice neutral reason for strike, saying that court was satisfied.

Then Court noted that Appellants motion to join in on Babson was noted. (TR. 77 L. 1-25)

DISCUSSION

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The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits the striking of a venire person on the basis of race or gender. "Id. at 615, 545 S.E.2d at 810." The purpose of Batson and its progeny are to protect the defendant's right to a fair trial by a jury of the defendant's peers, protect each venire person's right not to be excluded from jury service for discriminatory reasons, and preserve public confidence in the fairness of our system of justice by seeking to eradicate discrimination in jury selection process. *State v. Haigler*, 334 S.C. 623, 638, 29, 515 S.E.2d 58, 90 (1999). Citations omitted when one party strikes a member of a recognizable racial group or gender, the trial court must hold a Batson hearing if the opposing party requests one. *Shuler*, 344 S.C. at 615, 545 S.E.2d at 810.

In *Punkett v. Elm*, 514 U.S. 765, 767, 115 S.Ct. 1769, 131 L.Ed.2d 834 (1995), the Supreme Court of the United States explained the proper procedure for a Batson hearing follows:

Under our Batson Jurisprudence, once the opponent of a peremptory challenge has made a prima facie case of racial discrimination (Step one), the burden of production shifts to the proponent of the strike to come forward with a race-neutral explanation (Step two). If a race-neutral explanation is tendered the trial court must then decide (Step three) whether the opponent of strike has proved purposeful racial discrimination.

Step two of this process does not demand an explanation that is persuasive or even plausible. *State v. Cochran*, 369 S.C. 307, 314, 631 S.E.2d 794, 798 (Ct.App. 2006) quoting *Punkett*, 514 U.S. at 767-68, 115 S.Ct. 1769. At step two, "the proponent of the strike does not carry any burden of presenting reasonably specific, legitimate explanations for strikes." *Id.* (quoting *State v. Adams*, 327 S.C. 114, 123, 490 S.E.2d 366, 371 (1996)).

"Therefore, unless a discriminatory intent is inherent in the explanation provided by the proponent of the strike,

the reason offered will be deemed race neutral and the trial court must proceed to the third step of the Batson process. *Id.* (quoting Purkett, 514 U.S. at 1768, 115 S.Ct. (1769))
 At step three, the opponent of the strike must show the reason offered, though facially race-neutral, was actually mere pretext to engage in purposeful racial discrimination.
 "Cochran, 369 S.C. at 315, 631 S.E.2d at 298 (citing Adams, 377 S.C. at 124, 470 S.E.2d at 372). "The burden of persuading the court that a batson violation has occurred remains at all times on the opponent of the strike" Haigler, 334 S.C. at 629, 515, 631 S.E.2d at 378. "When the opponent of the strike proves the proponent of the strike practiced purposeful racial discrimination, the trial court must quash the entire jury pool and initiate another jury selection de novo." Cochran, 369 S.C. at 315, 631 S.E.2d at 298.

For the purpose of demonstrating potential jurors are similarly situated under Batson, potential jurors are not required to be identical in all respects. "Miller-EI v. Metke, 545 U.S. 231, 247, 116 S.Ct. 2317, 162 L.Ed.2d 196 (2005).

The determinative issue in any Batson claim is whether, in light of the totality of the circumstances, a party engaged in purposeful, invidious discrimination. *State v. Gill* (S.C. App. 1995) 319 S.C. 283, 460 S.E.2d 412

In a Batson hearing, whether a proffered reason is racially neutral is to be determined by examining the totality of the facts and circumstances in the record surrounding the strike, including the credibility and demeanor of the individual called upon to explain her/his strike. *State v. Kelly* (S.C. 1995) 319 S.C. 173, 460 S.E.2d 368

Indicating whether the opponent of peremptory strike has carried the burden of persuasion, a court must undertake a sensitive inquiry into the circumstantial and direct evidence of intent. *State v. Edwards*, 374 S.C. 543

South Carolina rejected dual motivation doctrine in the batson context.

Payton 379 S.C. at 59-60, 415 S.E. 2d at 210. They adopted the "tainted approach" whereby a discriminatory explanation for exercise of a peremptory challenge will vitiate other nondiscriminatory explanations for the strike. "General instability"

See State v. Robinson, 305 S.C. 469, 409 S.E. 2d 404 (1991)

Stereotype/Sterotypy, means: 1. A conventional, formulaic and over simplified, opinion, conception or belief 2. to develop a fixed Ideal about. As In Tomlin 299, S.C. at 298-99, 364 S.E. 2d at 910 "The Use of Racial Stereotypy".

Based on the states explanation for challenging jurors 122, 169, 115. Court should've found State violated Batson, being State gave pretext explanation for purposeful discrimination, State's explanation was her red hair and way she stared them down and that anyone with Artificial hair coloring he would not allow on his jury panel. This was purposeful discrimination, why? The generalization of people who wear artificial hair coloring without any evidence that every person with Unnatural or Artificial hair coloring was actually biased, prejudiced or had a non pro law enforcement attitude and unable to decipher the evidence to calculate a fair an accurate decision to deliver a verdict violated Batson, See State v. Edwards, 374 S.C. 543

States explanation for striking Juror 169, was a fixed Ideal about juror which was a conventional, formulaic, opinion or conception of belief. A black man dressed professionally, presenting himself in a professionally manner with Tie, Vest, Slacks and loafers and because he had tattoos this was so Implausible and pretext for Individual discrimination. When state was able to pull NICEI records and was aware of Mr. Seaborn's job history which was a Supervisor Shaw's this was the use of discrimination and Stereotypy by the State's Attorney

State's Attorney explanation for challenging juror 115 Jadan locklear Native American female 23 years old State's explanation was that she was too young not alot of life experience for case. Know this was pretext for discrimination because State Attorney sat Sarah Fawn White female 24 years old four jurors before challenging Juror 115 Jadan locklear who was months younger not years. How does Sarah Fawn different from Ms. locklear only difference is that Ms. locklear is not a white female and a Native Female or "Person of Color". Which shows Individius discrimination by States Attorney, and that State was in violation of Batson. Pursant to State V. Smalls, 336 S.C. 301

State V. Smalls was cited by Court which was a misintepretation of the language, being ~~State's~~ interperetation was that proponent may meet the burden by showing that similar jurors were sat under same circumstances as jurors that was challenged,

Saying State sat black Females which was a showily none-racial discrimination But this is not the language of Smalls. being a proponent of strike can purposeful sit a "Minority or Person of Color" to camefloug there true intent of discrimination. against other minority's in jury pool.

Appellant was not allowed to elaborate or raise an argument to Court because trial judge made a finding directly after Appellant moved to join in on Batson motion so Appellant Argument was never heard but objection was noted.

Respectfully, This Court should hold the trial judge abused his discretion by denying Appellant's Batson motion, Reverse Appellant's conviction and remand for new trial

STANDARD OF REVIEW

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The trial court is required to charge only the current and correct law of South Carolina. Sheppard v., 357 S.C. 646, 665, 594 S.E. 2d 472, 462 (2004) "The law to be charged must be determined from the evidence presented at trial." State v. Knoten, 347 S.C. 296, 307, 555 S.E. 2d 391, 394 (2001), "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." State v. Mattison 388 S.C. 469, 478-79, 697 S.E. 2d 578, 583, (2010)

Argument

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Did Trial Judge err by giving Accomplice liability Instruction when State presented no evidence of common scheme or plan and that it was more than one shooter pursuant to Barber, Wilds, and Sellers.

Relevant Facts

On September 11-15 2025, Trial was had were Appellant was jointly tried with defendant Octavio Wright for murder and kidnaping of Hall Eskews. After State's and defendants presented there case Judge Alex Kinlaw Jr. had a bench conference were he presented both parties with jury charges of Murder, kidnaping, mere presence, Accomplice liability.

At this off the record bench conference were both parties were presented with charges Appellant Objected to the accomplice liability instruction due to lack of evidence presented by State at which Judge denied objection finding that State presented adequate evidence to up hold Accomplice liability Instruction Court went back on record and Attorney Brown argued mutual combat which was denied. (TR. Pg. 977 L. 15- Pg. 980 L. 25)

State case presented at trial consisted of testimony from Co-defendants Jimmy Green Jr., Octavio Wright, Abantee Peince, Shelby Portch, Steven Sanders who all made several inconsistent statement, none of codefendants testimony corroborated with eachother unsurprisingly, thier testimony was often inconsistent with eachother and opperently that each of them was attempting to minlizing thier own involvement. Their testimony was Hall Eskew being murdered on 17th or 18th of december. When he pulled up at 410 East Poinsett Green SC. which was Jimmy Green Jr. and Abantee Peince residence and when he arrived, upon entering Jimmy's house through back door in kitchen He was hit with a hammer in the back of his head at that's when he supposedly

got beat by Appellant, Jimmy Green Jr., Octavio Wright, Steven Sanders. Jimmy Green Jr. was ordering Co-defendants to do these things at gun point. Jimmy Green Jr. ordered Steven Sanders to get cords and tie Eskew's up at which Sanders found cords but claimed he attempted to tie Eskew's up but couldn't so Jimmy tied him up then Appellant, Octavio, Sanders left with Eskew's in his truck. Appellant driving Octavio in the passenger seat, Sanders and Eskew's in back seats at gun point by Octavio Wright drove to Victim Residence where they emptied Victim's safe of guns and collectible coins heading back into truck then drove around for several hours before stopping at rail roads of Mitchell rd and Chickspring rd. crossing were Sanders leading Victim and Appellant, Octavio still holding gun on Victim walking them down train tracks once they found spot Sanders claims Appellant and Octavio told him to go back to the truck and once at the truck Sanders heard a gun shot and that's when Appellant and Octavio returned Eskew's did not. when Appellant and Octavio returned Octavio still had possession of gun. (TR. Pg. 439-Pg. 526 L. 25), (TR. Pg. 579 L. 25-Pg. 601 L. 25), (TR. Pg. 647 L. 13-Pg. 717 L. 25) (TR. Pg. 721 L. 1-Pg. 830 L. 2)

Discussion

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As in *Sellers*, "Ordinarily, the state convicts a defendant of a crime by proving that he personally committed the criminal act." 442 S.C. at 148, 508 S.E.2d at 170. The law of accomplice liability provides, however that a person may be guilty of a crime even though he did not personally commit the criminal act. See *State v. Crowe*, 258 S.C. 258, 265, 188 S.E.2d 379, 382 (1972) holding a defendant who did not shoot the victim but was acting in concert with the shooter was "as guilty as the one who committed the fatal act"). In a murder case for example, if two people plan or agree to commit the murder, and both of them are present at the scene of the crime, but only one of them actually shoots and kills the victim, both participants in the plan or agreement are never the less guilty of the murder. *State v. Langley*, 334 S.C. 648, 648-49, 515 S.E.2d 98, 100-01 (1997). Thus, in a murder case involving a gunshot the trial court should charge the law of accomplice liability when there is any evidence (1) the defendant had mutual plan or agreement with another person to commit the murders and (2) the other person in the mutual plan or agreement fired the fatal shot. See *Washington*, 431 S.C. at 407, 548 S.E.2d at 786 (holding it was ~~error~~ to give an accomplice liability charge when though there was evidence the defendant had mutual plan with another person and evidence another person fired the fatal shot there was no evidence the other person who might of fired the shot was part of the mutual plan); *Barber v. State*, 393 S.C. 232, 236-37, 712 S.E.2d 436, 439 (2011). In *Barber* an alternate theory of liability may not be charged to a jury "Merely on the theory the jury may believe some of the evidence and disbelieve other evidence". 393 S.C. at 236, 712 S.E.2d at 438. In order to imply criminal liability to the accomplice there has to be a showing that there was possibly two shooters if all evidence points to one shooter the accomplice liability instruction shouldn't have been given.

As in State v. Wilds, some type of plan has to be shown the jury can't be made to infer or assume a plan was made it has to be shown by evidence.

As in this case State never showed that Appellant was apart of a mutual plan or scheme to murder Hall Eskew or that Appellant was acting or that Appellant was committing another act and in the commission of another crime a murder was committed.

In fact All co-defendants said that they were held at gun point by Jimmy Green Jr. and ordered to do the things they did. All co-defendants except for Sanders gave testimony of no plan or common scheme that Appellant was apart of that plan. There testimony was only of Appellant being present at Jimmy's house when this took place, which was only mere presence.

The only testimony about a plan was from Steven Sanders who stated "The plan was They were going to tell man to come over there they were going to beat him and take all of his stuff" (TR. Pg. 537 L. 23-24, 538 L. 25) Appellant wasn't mentioned to be apart of that plan a jury couldn't infer or assume that Appellant was apart of that plan.

In fact Jimmy Green Jr. testimony contradicted Sanders testimony because Jimmy Green Jr. testimony was "that Victim came over to get drugs that was owed to him by Jimmy and that when I came in the back door an Argument broke out between Eskew and Appellant and we started fighting that's when Wright hit Eskews with a hammer and gun was put on Eskews by Appellant" (TR. Pg. 726-731 L. 25)

This was known to be untruthful because All Co-defendants who testified said Appellant never had a gun. All Codefendants said Jimmy Green Jr. and Octable Wright had the guns this whole encounter, and was ordering them or holding at gun point.

Also Shelby Porters Stated that "Wright told her that him and Appellant took Eskew's to railroad tracks and Eskew's asked to go pee and while Eskew's was peeing, Wright shot him in the back of the head. (TR. Pg. 685 L. 1-7)

This would mean Wright acted alone, when he committed the murder

State presented a case that said Appellant robbed victim for truck and guns, coins stuff, there was no coins, no guns found to be in defendants possession except one and that was in Appellants mercedes-benz that was seized by Investigator King and it wasn't Eskew's gun that was supposedly stolen, Appellant and Codefendants was never charged for Armed Robbery.

Appellant presented testimony from Jallina dodd that she witnessed Appellant buy coins from Eskew's on two to three occasions around first week of December 2018. (TR. Pg. 955 L. 1-25) Also Appellant presented evidence that he bought truck from Eskew's on December 14, 2018 from witness James Rector for \$4,500 and a substantial amount of drugs and that after selling the truck Appellant and James Rector took Eskew's back to his home. (TR. Pg. 961 L. 1-962 L. 25)

Sanders own testimony was that he made two statements first one was that he only participated in going to Eskew's home taking guns and coins then back to Jimmy's and Abby's home were he left and that he didn't go to railroad were victim was found. and That he made second

Statement out of fear that he was going to get a murder charge and by making the second Statement say he was at railroad tracks and witnessed murder. That he didn't get charged with murder.

(TR. Pg. 606, L. 6-7, 607 L. 15) which would show Sanders was bias and only made statement to get out of being charged for murder.

Shelby Portch admitted to Not knowing what happened to victim. She wasn't there and she didn't see anything. She didn't know who assaulted victim and she didn't know who shot victim. She only knows what she was told (TR. Pg. 717 L. 8-14)

Abarlee Pierce testimony was all over the place showing several Inconsistencies and contradictions, saying she seen me arrive and that Appellant had black on then admitting to making statement in previous trial that she didn't see me arrive (TR. Pg. 508 L. 12-510 L. 1) her testimony was that she was in bed on her medication a medication that makes her drowsy and she never went into kitchen until Jimmy made her help clean up the blood.

This would mean Shelby Portch and Abarlee Pierce testimony didn't matter because they only could testify to things they were told by Jimmy Greenjr. and Wright who were there boyfriend.

Out of All the testimony given none presented evidence that Appellant was acting with Wright if anything showed that Jimmy, Steven and Wright were accomplices and that Appellant was being ordered at gun point as the others being state's evidence only showed that it was one shooter Wright and that Jimmy and Wright were holding Appellant and Shelby, Pierce at gun point ordering them to do things. Sanders own testimony was that Wright had gun whole time while Appellant drove pointing it at

Sanders which would mean he was also pointing gun at Appellant who was driver and Wright was front passenger holding gun in his right hand pointing it to left Sanders was sitting behind driver Victim was tied up sitting behind Wright.

How could a jury should not have to assume or infer that a plan was made or that Appellant was acting with Wright was an assumption and that an equivocal evidence has to be shown that can support an alternate theory. State showed that Jimmy and Octavia were acting together and that they ordered Co-defendants Shelby, Steven, Abarlee and Appellant to beat victim and take his stuff at gun point and that while at railroad tracks Wright shot victim while he was peeing acting alone.

As in Wilds, Barber, and Sellers State presented no evidence of a common scheme or plan and since Wright was only possible shooter the question is was Appellant acting with Wright? and State showed no evidence Appellant was. Judge erred by giving Accomplice Liability Instruction.

Respectfully, This Court should hold the trial Judge erred by giving Accomplice Liability Instruction when State's evidence presented did not warrant the Instruction, Reverse Appellant's conviction and remand for new Trial.

STANDARD OF REVIEW

Pg. 21

In criminal cases, the appellate court sits to review errors of law only. *State v. Wilson*, 345 S.C. 1, 545 S.E.2d 827 (2001); *State v. Mattison*, 352 S.C. 577, 575 S.E.2d 852 (Ct.App.2003). This court is bound by the trial court's factual findings unless they are clearly erroneous. *State v. Quattlebaum*, 338 S.C. 441, 527 S.E.2d 105 (2000). The appellate 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. *Mattison*, 352 S.C. at 583-84, 575 S.E.2d at 855. An abuse of discretion occurs when the trial court's ruling is based on an error of law. *State v. McDonald*, 343 S.C. 391, 540 S.E.2d 464 (2000) *State v. Adams*, 354 S.C. 361, 577-78 S.E.2d 785, 793-94 (Ct.App.2003). In order for an error to warrant reversal, the error must result in prejudice to the appellant. See *State v. Beck*, 342 S.C. 129, 536 S.E.2d 679 (2000).

ARGUMENT

7.23

The trial Judge erred by not allowing Impeachment of witness Abanlee Pierce for Inconsistent Statement pursuant to Rule 613.

Relevant Facts

At September 11-15 2023 Trial, During cross-examination of Witness Abanlee Pierce. Appellant asked Witness Pierce "if she remembered stating that this happened to victim on 18th to 19th of December 2025?"

At which Ms. Pierce stated "No", denying making the statement twice. Appellant Appellant motion to the court, explaining that Appellant would like to introduce into evidence prior Inconsistent statements from prior March 12, 2023 trial Transcript, for purpose of Impeachment of Ms. Pierce pursuant to Rule 613.

(TR. pg. 501-502 L. 4) Appellant introduced statements showing that Ms. Pierce was being inconsistent but instead of being allowed to impeach witness. The court made Appellant continue questioning witness Ms. Pierce in Droffer while jury was not present. "Court explanation was to see were I was going"

(TR. pg. 503 L. 7 - TR. 507 L. 15)

During questioning Appellant asked Ms. Pierce "do you remember stating you seen me arrive" her answer was "yes I do".

Appellant then asked "Do you remember stating in prior testimony that you didn't remember me arriving there or seeing me arrive there" Ms. Pierce answer was "Yes I do". Appellant then asked Witness Ms. Pierce "Now your saying that you seen me arrive and that I had black out?".

Ms. Pierce answer was "I been thinking" At which the Court asked what was her answer to that question in disbelief.

Appellant moved for Impeachment again and was told to continue questioning the witness the jury was brought back in and witness testimony was heard by Jury panel and allowed into evidence, over Appellant motion for Impeachment pursuant to Rule 613.
(TR. Pg. 509-14, 509 L. 25)

DISCUSSION

According to Rule 613, SCRE:

Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and is given the opportunity to explain or deny the statement. If a witness does not admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible. This provision does not apply to admissions of a party-opponent as defined in Rule 801 (d) (2).

The South Carolina rule differs from the federal rule in that a proper foundation must be laid before admitting a prior inconsistent statement. It is mandatory that a witness be permitted to admit, deny, or explain a prior inconsistent statement. Under rule 613 (b), extrinsic evidence of the statement is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made. Rule 613 (b) explicates the procedures for impeachment by a prior inconsistent statement and requires laying the foundation. See *State v. Solmer*, 337 S.C. 364, 523 S.E.2d 157 (Ct. App. (1999))

Rule 613(b), SCRE, "A prior inconsistent statement may be admitted as substantive evidence when the defendant testifies at trial and is subject to cross-examination." State v. Stokes, 361 S.C. 390, 398-99, 673 S.E.2d 434, 439 (2009). Unlike the federal rule, the South Carolina rules requires that a proper foundation must be laid before admitting a prior inconsistent statement. State v. McLeod, 362 S.C. 73, 81, 606 S.E.2d 215, 219 (Ct. App. 2004). Thus, it's mandatory that a witness be permitted to admit, deny, or explain prior inconsistency. Id.

The Court abused it's discretion by not allowing the impeachment of Abankee Pience Pursant to 613 SCRE, being Appellant layed out a foundation for admitting the prior Inconsistent Statement at which Abankee Pience denied making twice. Then providing Transcript to court from first trial as evidence of Inconsistency, The Court didn't allow Appellant to impeach the witness Ms. pience was found to be competent of what and when she said it. competency isn't the question. Then Court made Appellant finish questions in proffer at which Ms. Pience was found to be Inconsistent a second time and admitted to making the Statement and Appellant moved again for the impeachment of the Witness, and Court never allowed Appellant to do so, when Appellant done the nessesary requirements for Impeaching the witness pursuant to SCRE Rule 613(B). Which witness was found to be very uncredible and Inconsistent.

Respectfully, This court should hold the Trial Judge erred by not allowing Appellant to impeach witness Abankee Pience pursuant to Rule 613 SCRE, Reverse Appellants conviction and remand for new Trial.

STANDARD OF REVIEW

Pg. 25

In criminal cases, this court sits to review errors of law only and is bound by the trial court's factual findings unless those findings are clearly erroneous, *State v. Paccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The admission or exclusion of evidence is within the discretion of the trial court, and its decision will not be disturbed on appeal absent an abuse of discretion, *State v. Winkler*, 388 S.C. 574, 583, 698 S.E.2d 596, 601 (2010). An abuse of discretion occurs when the trial court's conclusions either lack evidentiary support or they are controlled by an error of law. *Id.* "Our role when reviewing a trial court's ruling concerning the admissibility of a statement upon proof of its voluntariness is not to reevaluate the facts based on our view of the preponderance of the evidence." *State v. Breeze*, 379 S.C. 538, 543, 665 S.E.2d 247, 250 (Ct.App. 2008). "Rather, our standard of review is limited to determining whether the trial court's ruling is supported by any evidence." *Id.* Thus on appeal the trial court's findings as to the voluntariness of a statement will not be reversed unless they are so erroneous as to show an abuse of discretion. *Id.*

ARGUMENT

Pg. 26

The trial Judge erred by not allowing witness Jalisha Dodd testimony pursuant to hearsay rule 803.

Relevant Facts

During Direct-examination of witness Jalisha Dodd at September 11-15 2023 trial.

Appellant asked Ms. Dodd, "Were we around each other during the week of Christmas?"

Ms. Dodd responded "Yes, sir."

"State mentioned court stating there was a matter to take up outside the jury."

The jury was sent out.

State Argument was that Appellant was offering Alibi defense and that the list provided didn't have Ms. Dodd on it.

Appellant explained to court that he never asked a date and that he was not allowed to go into interpretation of what he meant by that."

Appellant was sent into proffer by Court to see what foundation and questions appellant was asking. (TR. Pg. 947 L. 1 - 949 L. 1)

During Proffer Appellant questions was:

"Q. Do you remember around that time of Christmas getting a call to move a body?"

"A. Yes!"

The Court: "To move what?"

Appellant: "A Body!"

The Court: "Go ahead"

Appellant: "Q. and who was that from?"

"A. It was from Jimmy Green"

"Q: and did I go move a body?"

At "No."

The Court allowed state to respond at which they objected to hearsay.

Appellant was asked by court how is witnesses testimony acceptable under hearsay rule 803. Appellant responded that it would fall under the 'Excited Utterance' because it was a phone call put on speaker phone while Ms. Dodd was in the room. Appellant was staying at Ms. Dodd house. She heard call. she was one that answered the phone. Ms. Dodd knew Jimmy's voice he stated his name then stated what he wanted, for me to move a body. And Appellant stated no and hung the phone up.

Appellant also stated he didn't know he had to go into further details being the Proffer.

The Court allowed State to respond.

State's argument was that Excited Utterance is a statement relating to a startling event or condition made while declarant was under stress.

That there was no event or condition or there's no foundation been laid that Jimmy was startled in any way that would make this statement be more truthful than or that she was startled. She was just in the room, sounds like or near Mr. Rector and then anything Jimmy Green would say would just be hearsay.

The Court went with state on its objection, Appellant objection was noted for record, and Witness Testimony of phone call was not allowed.

(TR. Pg. 949 L. 2-952 L. 1A)

DISCUSSION

Pursuant to Rule 803(2), a statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition. Is not excluded by hearsay rule, regardless whether the declarant is available as a witness. Rule 803(2), SCRE; see also *State v. Sims*, 348 S.C. 16, 20, 558 S.E.2d 518, 520 (2001) ("An excited utterance is a statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by event or condition.")

Both of the United Supreme Court and the South Carolina Supreme Court have declared that Excited Utterance is a firmly rooted hearsay exception. *White v. Illinois* 502 U.S. 346, 355 n. 8, 112 S.Ct. 736, 116 L.Ed. 2d 848 ("There can be no doubt that the two exceptions we consider in this case are firmly-rooted." The exception for spontaneous declarations is at least two centuries old...it's currently recognized under federal Rule of Evidence 803(2) and in nearly-four-fifths of the States."); *State v. Burdette*, 335 S.C. 34, 45, 515 S.E.2d 525, 531 (1999) ("We...find that the Excited Utterance exception is firmly rooted in South Carolina law and satisfies the requirements of the Confrontation Clause.") accord *State v. Dennis* 337 S.C. 275, 523 S.E.2d 173 (1999).

Three elements must be met to show a statement is an Excited Utterance; (1) The statement must relate to a startling event or condition; (2) The statement must have been made while the declarant was under the stress of the excitement; and (3) The stress must have been caused by the startling event or condition. *Sims*, 348 S.C. at 21, 558 S.E.2d at 521, The court must consider the totality of the circumstances in determining whether a statement falls under the Excited Utterance exception. *State v. LaCorte*, 347 S.C. 153, 160, 553 S.E.2d 464, 468 (Ct.App. 2001); *State v. McHoney*, 344 S.C. 85, 544 S.E.2d 30 (2001)

The rationale behind the Excited Utterance exception is that the startling event suspends the declarant's process of reflecting thought, reducing the likelihood of fabrication." LaCoste at 160, 553, S.E. 2d at 468 (quoting State v. Dennis, 337 S.C. 275, 284, 523 S.E.2d 173, 177, (1999)).

Time is a factor in the Excited Utterance analysis, and our courts have allowed intervals in excess of an hour, even up to eleven hours, between the startling event and the statement. See State v. Blackburn, 271 S.C. 324, 328, 247 S.E.2d 334, 336 (1978). Courts have disallowed use of the Excited Utterance exception when an unusually long time period passed before the statement was made and the declarant had time to compose himself or herself or had other opportunities to speak. See State v. Whisonant, 335 S.C. 148, 515, S.E.2d 768 (Ct.App. 1999). Use of the exception has been overturned when the interval cannot be determined from the record. State v. Goveia, 334 S.C. 71, 77, 512 S.E.2d 507, 510 (1999); State v. Hill, 331 S.C. 94, 501 S.E.2d 122 (1998).

How even the stress of the event—not the time between the event and the statement is the linchpin of the Excited Utterance exception. See State v. Quillion, 263 S.C. 87, 97, 207 S.E.2d 814, 817 (1974) "There are no hard and fast rules as to when negotiae ends." State v. Harrison, 298 S.C. 333, 336, 380 S.E.2d 818, 820 (1989), superseded by rule *404 as stated in Hill, 331 S.C. at 99, 501 S.E.2d at 125. Time is one factor to consider, other factors useful in determining whether a statement qualifies as an Excited Utterance include the declarant's demeanor, the declarant's age and the severity of the startling event." Sims, 348 S.C. at 22, 558 S.E.2d at 571.

Additionally, the statement must be based on firsthand information, such as statements of an actual witness to an event. Hill, 331 S.C. at 99, 501 S.E.2d at 125; LaCoste, 347 S.C. at 161, 553 S.E.2d at 468. Firsthand knowledge may be established by information conveyed in the statement itself. Id. at 161, 553 S.E.2d at 469.

A murder is certainly a startling event. See Dennis, 337, S.C. 275, 284, 523 S.E. 2d. 173, 177 (1991)

The statement made by Jimmy Green jr. was related to a startling event entitled to moving a body and it was made directly to Ms. Dodd the witness who answered the phone. As in Dennis murder is established as a startling event the question is if Jimmy Green jr. was under the stress or excitement of the condition of the murder that had taken place. when making the statement Jimmy Green jr. own testimony that he flipped out and went on a suicide mission because he knew how serious this was shows the amount of stress Jimmy was under. (TR. pg. 777 L. 21- pg. 779 L. 5) Then the fact that Abner Pierce and Shelby Dorch gave testimony that Jimmy Green jr. at gun point made them use sheets and bleach on Armonia to clean up a puddle of blood out the kitchen from floor and walls. Then payed another individual not named who was walking down the street to get rid of evidence shows (TR. pg. 477 L. 2- pg. 478 L. 25), (TR. pg. 465 L. 1- pg. 466 L. 5) (TR. pg. 657 L. 17-22) This shows the urgency and amount of stress he was under getting enough stress that he'd hold two women hostage one being his girlfriend then make them help him clean up the blood. State had given testimony from Jimmy that he was on house arrest and couldn't leave home, and State gave testimony that Jimmy was calling other people to get rid of evidence. Why does any person call a person to help them get rid of or move a body evidentially or under the stress of being caught which we know Jimmy Green jr. was which makes this statement more credible being the evidence produced showed Jimmy was part of or committed a murder. In his house the kidnapping and beating of victim took place and he was tied and gagged and that victim was bleeding out back of his head unconscious. and all this took place around Christmas. Ms. Dodd couldn't testify to if Jimmy was scared or hysterical

Being that would've been speculation.

Respectfully, This court should hold the trial Judge erred by not Allowing testimony of Jalisha dodd and Sustaining Objection to hearsay, This courts should Reverse Appellants conviction and remand for 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,
by A. Rector
Sevarnaggo S. Rector

The 17th day of August, 2025

Ridgeville S.C. 29412

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