

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Oct 01 2025

SC Court of Appeals

Appeal from Sumter County

Honorable Kristi F. Curtis, Circuit Court Judge

Opinion No. 2025-UP-314

THE STATE,

RESPONDENT,

V.

DEMETRIUS ALEXANDER BROWN,

APPELLANT.

APPELLATE CASE NO. 2022-001360

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Demetrius A. Brown petitions this Court for rehearing. This Court should grant rehearing and hear oral argument on this interesting evidentiary issue. This Court overlooked that the legal issue is a double-layered Rule 613 analysis. This Court's holding, as it now stands, would prevent a full application of Rule 613 and take away an important tool for parties to cross-examine recalcitrant witnesses. Appellant was entitled to use Rule 613 to expose a witness's lies about whether the decedent brought a gun.

Whether Lonnie Pack brought a gun when he came to appellant's garage looking for trouble was an important factual issue on this self-defense case. Brown testified that Pack pulled

a gun on him. R. 565. Pack's cell phone messages indicated that someone hired Pack to shoot Brown. Def. Ex. 40. R. 723-24. No gun was found at the scene. R. 431.

The police found Anfernee Bradley's phone at the scene. R. 79. Bradley testified for the State and said Pack did not have a gun. R. 96. Appellant's cross-examination of Bradley was the first layer of Rule 613. During cross-examination, defense counsel asked Bradley if he ever told a man named Bennie Haynesworth that Pack brought the gun. R. 123. Bradley replied, "I don't even know who that is." R. 123. Defense counsel asked Bradley another question about Bennie Haynesworth and Bradley repeated, "I don't even know who that is." R. 123.

Under Rule 613, appellant was then entitled to use extrinsic evidence to prove that Bradley told Haynesworth that Pack had a gun. Appellant called Haynesworth and when he began to ask the Rule 613 questions, the solicitor made a hearsay objection. R. 488-89. During the proffer, defense counsel asked Haynesworth if Bradley told him that Pack had a gun when he got out of the car at the garage. R. 490. Haynesworth said no, and then added he had suffered "several head injuries since then." R. 490. He again said he did not recall telling the police that Bradley saw Pack with a gun that day. R. 491. He denied remembering the policeman even though the policeman was in the courtroom. R. 491 – 492.

Because of Haynesworth's denials, appellant now needed to use Rule 613 extrinsic evidence to impeach Haynesworth. The impeachment of Haynesworth is the second layer of Rule 613.

Had Haynesworth admitted that Bradley told him Pack had a gun, that evidence would have been admissible as extrinsic evidence under Rule 613. Because Haynesworth did not remember and denied making the statement, it became necessary for appellant to use Rule 613 to impeach Haynesworth with extrinsic evidence.

That extrinsic evidence was on video and is reliable. Defense counsel played video clips from Defendant's Exhibit 52 "to refresh his memory." R. 492 – 494. When the clips were being played, Haynesworth asked to "state something for the record." R. 493. He alluded to "an incident" regarding "a portion of my folk" and said he "really felt something against, against the family at the—at that particular time given that statement also." R. 493. He then immediately denied remembering giving the statement. R. 493.

The video clips played to Haynesworth were Haynesworth being interviewed by two police officers. Def. Ex. 52. On Clip #1 of Exhibit 52, at approximately the 2:27 mark, one of the officers asks Haynesworth, "Did anybody ever say anything about [Pack] having any weapons?" Def. Ex. 52. Haynesworth replied, "They say Lonnie had a gun when he got out the car." Def. Ex. 52. The officer asks, "Who said that?" Def. Ex. 52. Haynesworth said, "A.J." Def. Ex. 52. The other officer clarified, "He told you that or that's what you heard he was saying?" Def. Ex. 52. Haynesworth said, "That's what he told me. He said [Pack] had the gun when he got out the car." Def. Ex. 52. This powerful extrinsic evidence was admissible under Rule 613 as extrinsic evidence to impeach Haynesworth and Bradley.

This Court erred in holding the video statement was "inadmissible hearsay." The cases and rules cited in the Opinion favor admission of the extrinsic evidence. The Opinion cites Rule 801(d)(1)(A), SCRE. This rule makes Haynesworth's prior recorded statement **not hearsay**. This portion of the rule is called, "Statements Which Are Not Hearsay." Rule 801(d), SCRE. "A statement is not hearsay if—(1) *Prior Statement by Witness*. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with the declarant's testimony." Rule 801(d)(1)(A), SCRE.

The video of Haynesworth telling the police that Bradley told him Pack had a gun is not hearsay because of this rule. The declarant is Bradley. Bradley testified at the trial and was subject to cross-examination. The statement is inconsistent with Bradley's testimony. Bradley said Pack did not have a gun and that he did not know Haynesworth.

The Rule also works the same if Haynesworth is the declarant. Haynesworth testified at trial and was subject to cross-examination. Haynesworth denied that Bradley told him he had a gun and Haynesworth also said he had memory problems. The video statement directly contradicted Haynesworth's claims. Rule 801 makes this statement not hearsay and it was critical, admissible impeachment evidence.

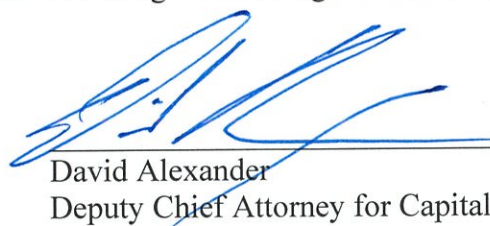
The Opinion also cites Rule 803(5), SCRE, which supports appellant's position. Haynesworth initially denied that Bradley said Pack had a gun, but then claimed trouble with his memory. R. 490. Rule 803(5) allows a party to use a "record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly." Rule 803(5), SCRE. The video statement is the record. It was made when Haynesworth's memory was fresh. It is a video and reflects the knowledge correctly. Rule 803(5) also allows the record to be admitted if offered by an adverse party. This rule cited by the Court supports admission of Haynesworth's video statement.

State v. Barnes, 421 S.C. 47, 804 S.E.2d 301 (Ct. App. 2017) is instructive. In Barnes, the State wanted to impeach the defendant's mother with a prior inconsistent statement. The defendant's mother "flatly denied she had stated Barnes was the one in the surveillance video wearing the grey sweatshirt" during a recorded phone conversation with McCoy, a policeman.

Barnes at 57, 804 S.E.2d at 306-07. The State called McCoy and played his recorded interview with Barnes' mother in which she identified Barnes wearing a grey sweatshirt. Id.

The only difference between Barnes and appellant's case is that McCoy did not deny hearing Barnes' mother's recorded identification. If McCoy had lost his memory or lied about the interview, the interview would not then become inadmissible hearsay. The State would have been able to either refresh McCoy's recollection or impeach McCoy (and Barnes' mother) with the interview under Rule 613 or Rule 803(5).

But under this Court's analysis in the Opinion, admissibility hinges on the witness's willingness to tell the truth or the witness's memory. We do not place the keys to admissibility in the hands of recalcitrant witnesses. The Rules of Evidence place those keys in the hands of lawyers and judges so that cross-examination can be an instrument for discovering the truth. This Court's Opinion errs in its analysis and rehearing and oral argument should be granted.



David Alexander
Deputy Chief Attorney for Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 1st day of October, 2025.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
Oct 01 2025
SC Court of Appeals

Appeal from Sumter County

Honorable Kristi F. Curtis, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DEMETRIUS ALEXANDER BROWN,

APPELLANT.

APPELLATE CASE NO. 2022-001360

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Demetrius Alexander Brown, #378276, at Turbeville Correctional Institution, 1578 Clarence Coker Hwy, Turbeville, SC 29162, this 1st day of October, 2025.



David Alexander
Deputy Chief Attorney for Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

 Outlook


2022-001360 The State v. Demetrius Alexander Brown - Petition for Rehearing

From Timberlake, Gage <gtimberlake@sccid.sc.gov>

Date Wed 10/1/2025 11:45 AM

To mbrown@scag.gov <mbrown@scag.gov>; abennett@scag.gov <abennett@scag.gov>

Cc Alexander, David <dalexander@sccid.sc.gov>

 1 attachment (560 KB)

2022-001360 The State v. Demetrius Alexander Brown - Petition for Rehearing.pdf;

Ms. Brown,

Find attached for service the Petition for Rehearing in the above-entitled case which will be filed with the Court of Appeals today.

If you have any questions, please let me know

--

Very Respectfully,

Gage Timberlake

Administrative Assistant

Commission on Indigent Defense

Appellate Division

(803) 734-1330

RECEIVED

Oct 01 2025

SC Court of Appeals