THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
General Sessions Court
Jocelyn Newman, Circuit Court Judge

Case No. 2016-GS-28-01123
Appellate Case No. 2024-001890

The State,

Respondent,

v.

Walter Wade Goad,

Appellant.

INITIAL REPLY BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

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3. Did the trial court err in admitting testimony of the lead investigator that the defendant was a large-scale marijuana dealer?

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ARGUMENT IN REPLY

Appellant's opening brief framed four issues and set out arguments and supporting authorities on each of those issues. Appellant adheres to those arguments, without repeating them here. This reply brief is filed to address certain points raised by the state in its respondent's brief. Based on the arguments of Appellant's opening brief and this reply, the court should reverse Appellant's conviction and remand for a new trial.

I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN REFUSING TO STRIKE JURORS 27 AND 33 FOR CAUSE.

Appellant contends the trial court abused its discretion in failing to excuse, for cause, jurors 27 and 33, for the reasons set out in Appellant's opening brief and not repeated here. This error was prejudicial to the defense because defense counsel was required to use peremptory strikes with respect to both juror 27 and juror 33, thus being deprived of the opportunity to use two of its five peremptory challenges to strike other members of the venire.

The state claims Appellant has failed to establish prejudice, and it invokes a prejudice standard articulated to address an entirely different situation involving a juror, a standard that has

no applicability to the situation presented in this case. The case on which the state relies, *State v. Rowell*, 444 S.C. 109, 906 S.E.2d 554 (2024), addressed a post-trial claim that one of the jurors who convicted a defendant had concealed information about his prior arrest in answer to a question during *voir dire*. The *Rowell* standard does not apply to the situation presented here, where the facts that would disqualify the jurors were revealed or apparent during the *voir dire* but the trial court failed properly to exercise its discretion – in the case of juror 27, in failing to make sufficient inquiry to determine if the juror's whistle upon hearing the drug quantity charged in the indictment indicated he had an opinion, bias, or lack of impartiality that rendered him incompetent to serve; and in the case of juror 33, in failing to excuse for cause a juror who had a years-long social relationship and soon-to-be family kinship with a witness the state was expected to call.[1] The prejudice in this case resulted from the impairment of the defense's exercise of its statutorily-mandated peremptory challenges in accordance with its own strategy over the course of the selection of the entire jury. The defense had to use two of its five challenges on jurors who should have been excused for cause, losing the opportunity to use those two challenges on other prospective jurors who could not be excused for cause. The loss of those two peremptory challenges for other use establishes the prejudice.

The state also makes the specious argument that defense counsel waived this issue during its opening statement to the jury, in which counsel asserted the jury seated for the trial was fair and impartial. The state does not cite any authority that so holds. The only authority cited for this

[1] In a footnote, the state notes the witness with which juror 33 had a relationship was not called as a witness at trial. This fact has no bearing on the analysis of the issue presented in this appeal. The state had listed her as a potential witness, and juror 33 had both a social and familial relationship with her. The facts as presented during *voir dire* were the only considerations for the court's analysis of the issue of excusing the witness for cause, and those facts were the only considerations for the defense in its exercise of its peremptory challenges. What transpired later during the trial is not relevant to the issue presented on appeal.

proposition is a century-old case involving a contract dispute over a shipment of coal, *Southern Coal Co. v. Rice*, 122 S.C. 484, 115 S.E. 815 (1923), a case that did not present a juror-qualification issue and has no bearing whatsoever on the current issue of failure to strike two jurors for cause. It cannot be said, as the state's parenthetical explanation of that case suggests, that the defense "accepted" the jury that was seated in this case and therefore waived this issue. The defense did not "accept" the seated jury. Indeed, the defense exhausted all its peremptory challenges before the final juror was selected.

The issue of the court's error in failing to excuse jurors 27 and 33 for cause was finally decided and concluded prior to the selection of the 12 jurors and alternate and prior to the opening statements given by the attorneys. The two jurors at issue had ***not*** been seated, the defense having exercised peremptory challenges to excuse them. Counsel's opening statement to the jurors that ***had actually been seated*** did not waive any claim related to the court's abuse of its discretion in handling challenges to two members of the venire that were not ultimately on the jury. Contrary to the state's contention, this issue was not waived.

II. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN ADMITTING TESTIMONY OF JOSHUA PARNELL CONCERNING PRIOR ALLEGED DRUG DEALINGS WITH APPELLANT.

Appellant challenges the admission of the testimony of Joshua Parnell regarding prior alleged drug dealings with Appellant, under Rules 403 and 404 of the South Carolina Rules of Evidence. Nothing argued by the state in its respondent's brief overrides the argument and authorities set out in Appellant's principal brief, which demonstrate reversible error in the trial court's admission of this testimony.

The state contends defense counsel's opening statement opened the door to admission of this evidence. The state incorrectly states counsel asserted in opening statement "that Parnell was

a liar," "that the cocaine found in the search of Parnell's house belonged exclusively to Parnell, not Appellant," and that Appellant "had merely been present at some point at the scene." Counsel's actual assertions are set out with specificity below, *infra* p. 5. Even if counsel had made the statements the state claims, such statements would not have opened the door to inadmissible testimony concerning alleged prior drug dealings between Parnell and Appellant.

The door-opening, invited-response doctrine is laid out in Appellant's opening brief, in Argument III, incorporated herein by reference. The admissibility of evidence under that doctrine is controlled by the principles set forth in *State v. Heyward*, 426 S.C. 630, 828 S.E.2d 592 (2019), *State v. Simmons*, 430 S.C. 1, 841, 841 S.E.2d 845 (2020), and other authorities cited in that Argument. The assertions the state claims counsel made in opening statement pertained to Parnell's credibility and ownership of the drugs found in his mother's house, an entirely different topic than alleged prior drug dealings between the two men. Admission of Parnell's testimony concerning their alleged prior dealings ran afoul of the limitation that testimony in response be proportional and ***confined to the topic*** to which counsel opened the door. *See Heyward*, 426 S.C. at 637, 828 S.E.2d at 595; *Bowman v. State*, 422 S.C. 19, 42, 809 S.E.2d 232, 244 (2018).

The state contends this case is analogous to the door opening that occurred in *State v. Dunlap*, 353 S.C. 539, 579 S.E.2d 318 (2003). *Dunlap* does not support or dictate the result the state seeks. In *Dunlap*, the defense told the jury in its opening statement that the defendant was addicted to drugs and that he used but never sold drugs, creating the impression that the defendant had no prior connection to the sale of narcotics. *See Dunlap*, 353 S.C. at 541, 579 S.E.2d at 319. The Supreme Court found the defense assertions opened the door to admission of the defendant's prior convictions for distribution of an imitation substance represented to be crack cocaine and for conspiracy to possess crack cocaine with intent to distribute. *Id. Dunlap* illustrates the proper

application of the door-opening doctrine – the state was allowed to respond to the very topic raised by the assertion in the defense's opening statement. *Id.* But in this case, the evidence the state elicited from Parnell was not related to nor responsive to the topic of counsel's opening statement.

A review of counsel's opening statement reveals that counsel did ***not*** state or suggest that Parnell and Appellant had never previously engaged in drug dealing. Tr. pp. 102-11. The passages of the opening statement that pertained to Parnell and Appellant are found on pages ___ (tr. pp. 109-10) of the record. Counsel told the jury Parnell was already serving time in prison for this exact offense. Tr. p. 109, lines 11-13. Counsel stated Parnell would tell the jury the background of the case, what happened on September 22, 2016. Tr. p. 109, lines 14-16. Counsel asked the jury to evaluate Parnell's testimony and look at his credibility, whether he has a motive, an interest, a bias, or a prejudice. Tr. p. 109, lines 18-21. Counsel asked the jury to evaluate whether Parnell has received or expects to receive a reward for his testimony and suggested that he does. Tr. p. 109, lines 21-24. Counsel suggested Parnell began cooperating with law enforcement the very moment he was arrested and had a motive to implicate Appellant and would benefit from doing so. Tr. p. 109, line 24 – p. 110, line 6. Counsel implored the jury to listen to Parnell's testimony carefully, whether it is consistent or inconsistent throughout, and whether it is consistent or inconsistent with the other evidence to be presented. Tr. p. 110, lines 6-13. Counsel repeated the request that the jury evaluate Parnell's testimony in light of what he is getting or has already gotten, whether he has a motive to lie, whether he is trying to fend for himself or satisfying an obligation for some recommendation the state may have made. Tr. p. 110, lines 14-21. Nothing in these comments by counsel expressed or implied that Parnell and Appellant had never previously engaged in drug dealing. By these statements, counsel did not open the door to testimony from Parnell that the two men had prior drug dealings. That aspect of Parnell's testimony was not

responsive to any of counsel's assertions, and it was inadmissible. In keeping with this Court's holding in *State v. Ostrowski*, 435 S.C. 364, 391-92, 867 S.E.2d 269, 283 (Ct.App. 2021), the defense did not open the door to Parnell's testimony concerning extraneous alleged drug activity.

The state contends the testimony was properly admitted under Rule 404(b), SCRE, as evidence of common scheme or plan. Appellant's opening brief sets out the parameters for admission of evidence under the common scheme or plan exception of Rule 404(b) and the particularly problematic admission of evidence of prior drug dealings under this exception in cases involving drug charges, citing numerous cases in support of Appellant's position that this testimony was inadmissible. Indeed, the state's brief acknowledges cases that appropriately disallowed use of prior drug-related evidence under the common scheme or plan exception, *State v. Barroso*, 328 S.C. 268, 493 S.E.2d 854 (1997), and *State v Humphries*, 346 S.C. 435, 551 S.E.2d 286 (Ct.App. 2001), *rev'd on other grounds*, 354 S.C. 87, 579 S.E.2d 613 (2003).

In arguing this evidence was admissible as evidence of common scheme or plan, the state relies on *State v. Raffaldt*, 318 S.C. 110, 456 S.E.2d 390 (1995), and *State v. Moultrie*, 316 S.C. 547, 451 S.E.2d 34 (Ct.App. 1994). Appellant submits *Raffaldt* and *Moultrie*, both decided more than three decades ago, are outliers, no longer in keeping with the current analysis employed by our appellate courts in their application of Rule 404(b)'s common scheme or plan exception, as explained in Appellant's opening brief and in the more recent authorities cited therein. *See State v. Perry*, 430 S.C. 24, 29, 842 S.E.2d 654, 657 (2020); *State v. Fletcher*, 379 S.C. 17, 23, 664 S.E.2d 480, 483 (2008); *State v. Robinson*, 438 S.C. 421, 430, 882 S.E.2d 883, 888 (Ct.App. 2023); *State v. Fonseca*, 383 S.C. 640, 647, 681 S.E.2d 1, 4 (Ct. App. 2009), *aff'd and adopted by Supreme Court as its own opinion*, 393 S.C. 229, 711 S.E.2d 906 (2011). As in numerous prior decisions of this Court and the Supreme Court, Parnell's testimony concerning alleged prior drug activity

with Appellant was inadmissible as evidence of a common scheme or plan. *See Barroso*, 328 S.C. at 271-72, 493 S.E.2d at 855; *State v. Tuffour*, 364 S.C. 497, 504, 613 S.E.2d 814, 818 (Ct. App. 2005), *vacated on other grounds due to plea to a lesser offense*, 371 S.C. 511, 641 S.E.2d 24 (2007); *Humphries*, 346 S.C. at 445-46, 551 S.E.2d at 292; *State v. Carter*, 323 S.C. 465, 468, 476 S.E.2d 916, 918 (Ct.App. 1996); *State v. Campbell*, 317 S.C. 449, 451, 454 S.E.2d 899, 901 (Ct.App. 1994).

The state contends this testimony was admissible under the intent exception of Rule 404(b), a ground the state did not argue in the trial court and the judge did not adopt as the basis for admission of the evidence. Contrary to the state's contention, the admission of this evidence cannot be sustained on the basis that it was evidence of intent. Unlike a charge for a crime requiring proof of intent to distribute as an element of the offense, *see, e.g.*, *State v. Wilson*, 345 S.C. 1, 545 S.E.2d 827 (2001), cited by the state, Appellant was charged with trafficking. The crime of trafficking in cocaine, S.C. Code Ann. § 44-53-370(e)(2), is established not through evidence of intent but through proof of quantity. *Cf. Ostrowski*, 435 S.C. at 392 & n.19, 867 S.E.2d at 283 & n.19 (involving charge of trafficking in methamphetamine and distinguishing *Wilson*, which allowed evidence of previous drug sale where the charged crime – possession with intent to distribute – required proof of an element of intent apart from a statutory *prima facie* showing of quantity). Here, the charge was that Appellant sold or delivered 200 grams or more but less than 400 grams of cocaine. Because there was no element of intent to be proven apart from quantity, evidence of alleged prior drug dealings between Parnell and Appellant was not relevant or necessary to establish intent and was not admissible under the intent exception of Rule 404(b). The state's only purpose in offering this evidence was the prohibited purpose – to establish Appellant's guilt of one crime not on the basis of proof of that crime but upon evidence that he

committed other crimes. *See Ostrowski*, 435 S.C. at 392-93, 867 S.E.2d at 283-84. As in *Ostrowski*, this evidence was propensity evidence the state wanted admitted so the jurors would conclude that, because Parnell said Appellant dealt in drugs with him before, Appellant must have delivered the drugs found on September 22, 2016, in the search of the house of Parnell's mother, where Parnell kept and dealt drugs. *See id.*

Finally, the state contends any error in the admission of this evidence was harmless. The state makes a similar contention with respect to the issue raised in Argument III. The state's harmless error arguments with respect to both issues 2 and 3 are addressed in Argument III, below.

III. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN ADMITTING TESTIMONY OF THE LEAD INVESTIGATOR THAT APPELLANT WAS A LARGE-SCALE MARIJUANA DEALER.

Appellant challenges the admission of testimony of the lead investigator, Michael Sellers, that Appellant was a large-scale marijuana dealer, on the ground that such testimony was inadmissible under Rules 403, 404, 801, and 802 of the South Carolina Rules of Evidence. The state's arguments do not establish that this inadmissible evidence was made admissible as an invited response to earlier questioning by defense counsel. For the reasons set out in Appellant's opening brief and the supporting authorities cited therein, not repeated here, the court erred in admitting this testimony.

The state contends the admission of this testimony was harmless, claiming the evidence of guilt was overwhelming, the effect of the testimony was minimal, and the evidence could not have contributed to the jury's verdict. The state makes a similar harmless error argument with respect to the issue addressed in Argument II, above. Contrary to the state's arguments, the court's errors in admitting Parnell's testimony as to alleged prior drug dealings with Appellant and Sellers' testimony Appellant was a large-scale marijuana dealer were not harmless and warrant reversal.

In this case, guilt was not conclusively proven, and other rational conclusions than guilt could be reached by the jury. The jury could have rationally concluded that Parnell had already obtained the largest quantity of the drugs found in the house – 221 grams – before he went to the house, in accordance with a recorded phone call introduced into evidence by the state. In that phone call, Parnell talked with the person to whom he was planning to sell a quantity of drugs, Jose, and Parnell told Jose he had obtained the drugs and was on his way to the house. This statement undermined Parnell's testimony that it was Appellant who delivered the largest quantity of drugs, found in Parnell's camouflage bag, after Parnell was at the house. Parnell was not a disinterested witness. He was the party found in possession and control of all the cocaine seized from the house, and he was initially charged with the offense of trafficking at a level that carried a mandatory 25-year term. He had every reason to lie and to implicate someone else, and he was the only witness who implicated Appellant in the alleged delivery of the drugs. None of the officers who were conducting surveillance of the Parnell property observed Appellant deliver anything to Parnell. The largest quantity of drugs was found inside the residence, in a bag Parnell admitted was his own and was what he regularly used to hold his illegal drugs. Upon this evidence, the jury rationally could have concluded Parnell was lying on the witness stand, instead believing Parnell's recorded statement to Jose that Parnell already had the drugs before he went to the residence. The jury could have concluded either Appellant did not deliver any drugs to Parnell or delivered only the smaller quantity, which testing deemed to be only 55 grams. Parnell and Appellant had a prior work relationship in the construction business, and the jury could rationally have concluded Appellant's presence at Parnell's mother's house that day was attributable to that relationship, not drug dealing. Given the inconclusive nature of the state's evidence as to Appellant's guilt and the clear contradiction of Parnell's testimony by his own statement during

the recorded phone call, it is highly likely the evidence of alleged prior drug dealing – from two separate sources, Sellers and Parnell – caused the jury to conclude Appellant was guilty, as propensity evidence is wont to do.

Appellant's guilt was not conclusively proven by competent evidence such that no other rational conclusion could be reached. *See Fletcher*, 379 S.C. at 25, 664 S.E.2d at 484. The erroneous admission of testimony from Parnell and Sellers about prior drug dealings likely influenced the jury to overlook the less-than-credible testimony of Parnell, the outright contradiction of Parnell's testimony by his own recorded words, and the self-interest of Parnell in minimizing his own culpability and implicating Appellant. This Court should find the erroneous evidentiary rulings challenged in both Arguments II and III were not harmless beyond a reasonable doubt, and grant Appellant a new trial.

IV. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN REFUSING THE DEFENSE REQUEST FOR A JURY CHARGE ON A LESSER QUANTITY OF COCAINE THAN THE 200 TO 400 GRAMS CHARGED IN THE INDICTMENT.

Appellant challenges the trial court's failure to charge the jury on the offense of trafficking in a lesser quantity than the amount charged in the indictment, 200 to 400 grams, on the basis of two aspects of the evidence introduced at trial: (1) the testimony of DEA Special Agent Adam Hardin that the tested quantity of cocaine (referred to by Hardin and others throughout the trial as 281 grams, though actually tested to be 276 grams) was the total amount of cocaine found in Parnell's mother's house, some of which was admittedly not part of the cocaine Parnell claimed was delivered by Appellant; and (2) the recorded telephone call containing Parnell's statement to his would-be buyer Jose that Parnell had already obtained the drugs before going to his mother's house, where Parnell alleged Appellant delivered the drugs to him. The trial court is required to charge a lesser offense if there is any evidence to support it. *See State v. Williams*, 427 S.C. 148,

156, 829 S.E.2d 702, 706 (2019); *Suber v. State*, 371 S.C. 554, 559, 640 S.E.2d 884, 886 (2007); *Leggette v. State*, 440 S.C. 590, 602, 892 S.E.2d 153, 160 (Ct.App. 2023); *State v. Brandenburg*, 419 S.C. 346, 350, 797 S.E.2d 416, 418 (Ct.App. 2017). The two aspects of the evidence noted above supported a rational inference that Appellant was guilty of trafficking in a lesser amount than the total of 276 grams seized from the residence, and the court abused its discretion in failing to give a jury charge on the offense of trafficking in a quantity less than 200 to 400 grams.

The state's brief acknowledges that a trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence. In its argument, however, it ignores the evidence in the record that supported the giving of a charge premised on a quantity of less than the 200 to 400 grams charged in the indictment. Its argument's summary of the "Relevant Facts" acknowledges Hardin's testimony that the quantity of cocaine tested was "a cumulative amount, a total amount" of the cocaine found in the residence. But in the "Discussion / Analysis" section of its argument, the state ignores this testimony altogether, selectively relying on the aspects of Parnell's testimony that supported a jury charge on trafficking in an amount of 200 or more but less than 400 grams. The only drugs alleged to have been delivered by Appellant were those found in the living room, and additional drugs that were not attributed to Appellant were found in various other parts of the house. Hardin's testimony that the tested quantity represented all the drugs in the house supported a rational inference that Appellant delivered a smaller quantity than 276 grams, warranting the giving of a jury charge on a lesser quantity than 200 to 400 grams. Further, in relying only on Parnell's ***testimony***, the state ignores other evidence – introduced by the state – that contradicted Parnell's ***testimony***. In the recorded phone call between Parnell and his anticipated buyer Jose, Parnell clearly stated he had already obtained the drugs and he was on his way to the residence. That statement supported a rational inference that Appellant did not deliver

the entire tested quantity of 276 grams, allowing the jury to conclude that Appellant brought only the smaller quantity, which testing revealed to be only 55 grams. This evidence warranted charging the jury on the offense of trafficking in a quantity of 28 to 100 grams. *See* S.C. Code Ann. § 44-53-370(e)(2)(b)(1).

As noted in the opening brief, the trial court was required to view the evidence ***in the light most favorable to the defendant*** when making the determination whether to charge the jury on a lesser offense of trafficking in an amount below 200 to 400 grams. *See Williams*, 427 S.C. at 156, 829 S.E.2d at 706; *State v. Scott*, 414 S.C. 482, 487, 779 S.E.2d 529, 531 (2015). Both the testimony of Hardin and the statement of Parnell in the recorded phone call contradicted the version of events espoused by Parnell and Sellers in their testimony and relied upon by the state. Viewing these two aspects of the evidence in the light most favorable to the defendant, the trial court was required to charge the offense of trafficking in a quantity less than the 200 to 400 grams charged in the indictment. The court's refusal to charge the jury that it could convict the defendant of trafficking in a lesser quantity was reversible error.

CONCLUSION

The Court should reverse and remand this case for a new trial.

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that I am serving the Initial Reply Brief of Appellant, by email to Assistant Attorney General J. Benjamin Aplin, at his AIS email address, baplin@scag.gov, on October __, 2025, as shown by the email by which these documents are being filed.

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