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**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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Appeal from Aiken County  
The Honorable Maite Murphy, Circuit Court Judge

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THE STATE,

Respondent,

v.

KEMONTEE DEVONTA BLOCKER,

Appellant.

Appellate Case No. 2024-000825

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**FINAL BRIEF OF RESPONDENT**

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**APPELLANT'S STATEMENT OF ISSUE ON APPEAL**

I.

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

## **STATEMENT OF THE CASE**

Kemontee Devonta Blocker (hereinafter “Appellant”) was indicted for murder (2023-GS-02-02366), attempted murder (2023-GS-02-02367), armed robbery (2023-GS-02-02368), possession of a weapon during the commission of a violent crime (2023-GS-02-02369), and discharging a firearm into a vehicle (2023-GS-02-02370). (R. p. 644-651).

Appellant opted to proceed to a jury trial before the Honorable Maite D. Murphy, on May 13-16, 2024. He was represented by attorneys Patricia B. Steiner and Derek M. Bush of the Second Circuit Public Defender’s Office. Assistant Solicitors Ashley A. Hammack and David H. Rittgers prosecuted the case. At the conclusion of the trial, the jury acquitted Appellant of armed robbery but convicted him of the remaining charges. (R. p. 634-635). Judge Murphy then sentenced Appellant to 30 years for attempted murder, 10 years for discharging a firearm into a vehicle, life without parole for murder, no sentence for the possession charge in light of the LWOP sentence given for the murder conviction. (R. p. 636).

On July 9, 2024, Appellant moved for a new trial and/or new sentencing on the basis of his acquittal for armed robbery, and the reliance upon the hand of one, hand of all accomplice liability theory. Alternatively, he argued for a reduction in sentence. Following the arguments of counsel, the trial court denied both motions.<sup>1</sup>

The Brief of Respondent follows.

## **STATEMENT OF FACTS**

Joseph “JoJo” Copeland, hereinafter Victim, had been friends with Mr. Michael Allen since elementary school. (R. p. 20). He came to live with Mr. Allen in order to finish his senior year in high school when his parents moved out-of-state. On the night of April 24, 2021, Victim and Mr.

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<sup>1</sup> The post-trial motions are not pertinent to the issue raised on appeal by Appellant.

Allen were hanging out together and Victim decided he wanted to buy some weed to smoke. Mr. Allen testified that Victim reached out to his contacts and found someone willing to sell him some weed. (R. p. 20-23). Mr. Allen did not know who Victim had been in contact with, but he drove himself and Victim out to an apartment complex known as “Bricks” in order to meet the dealer and make the purchase. (R. p. 26-27; 30).

It was dark out when they arrived, so Mr. Allen parked his SUV in the parking lot, turned off his lights, but left the vehicle running. (R. p. 30). A few minutes after their arrival, two men about their same age came up to the passenger side of their car. Mr. Allen testified that he knew of them and recognized their faces, but he did not personally know their names. (R. p. 33). However, Victim appeared to know the individuals personally, and Mr. Allen recalled Victim calling one of the men either “Reggie” or “Rickie”. Mr. Allen was seated so that he could see both the individual outside Victim’s window and the individual seated in the back seat of the vehicle. (R. p. 36; 65). One of the individuals stood at the passenger sideview mirror while the other climbed into the back passenger side of the car. There, the man in the back pulled out a scale and began to measure weed for their purchase. (R. p. 32-35).

Once the weed was measured, Mr. Allen testified that Victim then paid them for the weed using a CashApp transaction. (R. p. 37). Soon after, the individual in the back seat started asking questions about guns. The conversation soon turned insulting by way of mocking Mr. Allen and Victim for not being armed. (R. p. 39-40). The man seated in the back pulled out his gun to show them. (R. p. 40-41) Of note, Mr. Allen described the gun as being partially red in color and having a laser sight – which was a topic of discussion amongst them that night. (R. p. 41-42). On cross-examination, Mr. Allen also referred to the gun as a Glock. (R. p. 58; 81). Victim responded by

pulling out his own gun for comparison.<sup>2</sup> However, Mr. Allen kept his own gun concealed. (R. p. 42-45).

Victim initially refused when the man seated in the back asked to see his gun, but the two men ultimately swapped guns to view and compare the laser sights that each possessed. Soon, Victim's gun wound up in the hands of the individual standing at the mirror and the dealer's "red" gun was returned to him in the back seat. (R. p. 42-44). With the deal complete, Mr. Allen told Victim to get his gun back and that they needed to leave. Victim asked for it back and that's when the shooting started. (R. p. 45-46). Mr. Allen could not be certain which of the two men shot first, but once shots were fired, he pulled his own firearm out and shot back. The two men fled the scene amidst their efforts to shoot at Mr. Allen and Victim. (R. p. 46-47).

During the shooting, he heard Victim suddenly gasp for air and experience symptoms similar to a seizure. He knew Victim had been hit and Mr. Allen chose to start driving toward the nearest hospital, rather than call 911 and wait for help. Victim lost consciousness in route to the hospital, and Mr. Allen checked but could not detect a pulse. (R. p. 49-50). Mr. Allen removed the weapons from his car on the way to the hospital, and though resuscitation was attempted by medical personnel, Victim died of a gunshot wound to the chest that severed the root of his aorta. Dr. Rose, the forensic pathologist, testified she had not seen a case where someone with this severe an injury was able to survive. (R. p. 51-53; 195; 199-201).

Though Mr. Allen's statements to the police were short and incomplete while at the hospital, he promptly provided a full explanation of the events that took place within approximately 12 hours of the shooting. His statement included the admission that he had fired back at the assailants in self-defense with his own gun, and he informed the officers of where to

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<sup>2</sup> The gun actually belonged to Victim's girlfriend.

find the guns he had removed from the car. (R. p. 462-463). Through the investigative efforts of law enforcement officers, Appellant and Reggie Jones were identified as suspects for the crime. Mr. Allen was presented with two separate photographic lineups. Therein, he successfully selected Appellant from the first lineup as the individual who had sold them the weed. He also correctly selected Mr. Reggie Jones from the second. (R. p. 56-58; 438-439).

Much of the forensic evidence that was collected did not provide a clear link to Appellant's guilt. However, in addition to Mr. Allen's testimony and identification, there was forensic evidence, physical evidence, and a partial confession that each tended to prove Appellant's guilt at trial. Appellant mistakenly left his scale in Mr. Allen's vehicle and law enforcement officers were able to successfully lift a print from the surface of the scale. Expert witness Adams testified that the print matched Appellant's right thumb standard and he was 100% confident in his conclusion. (R. p. 453-455). Cell phone records demonstrated that Victim's CashApp transfer of money for the weed he was purchasing was sent to a CashApp user by the name of "Kemontee Blocker" and that the money was accepted by that account. (R. p. 173-175).

Appellant engaged in a mirandized interview with Detective Jon Eagerton. The recording of that interview was played in court and transcribed into the written record. Appellant began by denying any participation in the crime, any presence at the scene, and any knowledge of an individual by the name of Reggie. Appellant's first story was that he picked up his girlfriend "Shy" and took her to his house, where they remained late into the night. Appellant insisted that his family and girlfriend would confirm that he was at his home in New Holland. (R. p. 464-488). Appellant's story then changed to confirm that he sold someone some weed that night, that Reggie had helped to set up the deal, but that he made the sale alone, left the scene without incident, and was at his girlfriend's home in the "Bricks" at the time of the shooting. (R. p. 512-523). Appellant further

told the officer that he only heard five shots, did not recall seeing or discussing any guns during the drug sale, and did not entertain the question of whether Victim and Mr. Allen instigated the violence. His story remained that he made the drug sale. However, he maintained that he was not present at the time of the shooting, that Reggie was in his girlfriend's home with him at the time of the shooting, and his girlfriend and her family would confirm his alibi.<sup>3</sup> (R. p. 544; 498-499; 522; 530-537); (State's Exhibit #69, at 12:35:50).

Both Kevin James (the father of Appellant's girlfriend) and Shy'Tavia James testified at trial. Both individuals testified that Appellant left their home at approximately 9:00pm and did not return that night. (R. p. 406-408; 414-416). Both individuals testified that Appellant was not in their home at the time of the shooting. The State also presented evidence of a photo and selfie-videos taken by Shy'Tavia which depicted a *red* Glock-style firearm in Appellant's possession within two weeks of the crime, and 12 shell casings recovered from the scene were consistent with the primer impressions of an old-style Glock firearm. (R. p. 367; 401-403). Additionally, some of the projectile evidence recovered from the scene possessed polygonal rifling, which is consistent with Glock manufacturing, and a Glock firearm represents one of the most common types of guns to possess that type of rifling. (R. p. 375-377; 398).

#### **ISSUE AS IT WAS PRESENTED AT TRIAL**

The State first referenced Exhibit 64 (which is not challenged on appeal), a still photograph, during the testimony of witness Chad Smith, the ballistics expert for the State. Objection was raised and discussed during a sidebar, and then placed on the record at a later time.<sup>4</sup> The evidence

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<sup>3</sup> The transcript reports the response as "inaudible," but the video clearly shows him nodding affirmatively. (State's Exhibit #69, at 12:35:50 through 12:36:00).

<sup>4</sup> The court then later made its ruling part of the record, noting that "the probative value outweighs the prejudicial effect. It's certainly relevant considering the testimony of Mr. Allen to corroborate to what he testified to, and I do not find that it is cumulative." (R. p. 449).

was not yet admitted or published, but the witness was allowed to see the picture and testify as to it sharing the common features of a Glock style pistol. Of note, Mr. Smith could not testify conclusively that this was an actual firearm, as opposed to a realistic replica. (R. p. 400-403; 449). The photo was later identified and admitted during Shy'Tavia's testimony. (R. p. 416-417).

During Shy'Tavia's testimony, the State then identified and sought to offer into evidence Exhibit 65: four videos created by Shy'Tavia using her phone. The defense objected and the matter was taken up outside the presence of the jury. (R. p. 419). Appellant argued to exclude the evidence pursuant to Rule 403 on the basis of its prejudicial and cumulative nature. Appellant then argued for exclusion under *Cheeseboro*, citing the rap lyrics that he believed were audible in the videos, and citing the actual lyrics he pulled from the internet. He further argued that the probative value was minimized due to Ms. Shy'Tavia's ability to testify to the gun and the admitted photograph. He then argued that the evidence is tantamount to improper character evidence, tending to show the jury that Appellant "has a tendency for violence." (R. p. 420-421).

The State argued in response that the videos are exceedingly probative to the facts in question in the case. The assistant solicitor argued that the videos are probative because, unlike the photograph, it places Appellant in possession of the firearm and some of the videos demonstrate the presence and use of the laser pointer sight. As such, the evidence demonstrates direct evidence of Appellant being in possession of a firearm that was specifically described by the eyewitness to the crime, and therefore corroborative of such testimony. The assistant solicitor added that the rap lyrics are irrelevant here, as they are not attempting to demonstrate anything from the music, and that she could not honestly hear the lyrics that were being sung. (R. p. 421-422).

The trial court then took the time to review the videos in question. Appellant then further argued that the April 17, 2021, date of the videos rendered them irrelevant under Rule 401, and reiterated the rap lyrics argument. Appellant then attempted to surmise that Appellant is wearing a rolled-up ski mask on his head.<sup>5</sup> The Assistant Solicitor merely reiterated the previous arguments that the videos demonstrate Appellant’s possession of a very particular and identifiable firearm, as testified to by the eyewitness to the crime. The trial court then handed down its ruling:

All right, thank you Counsel. And taken into consideration, and after viewing the videos, and looking at the *Cheeseboro* case, I do find that the probative – the material issue – that the videos are probative of a material issue other than to – other than character, and they’re offered for a purpose other than for non-propensity purposes – the probative value is outweighed by the – the prejudicial effect is outweighed by the probative value. So, I think they are more probative than prejudicial in considering the fact that it is a gun, such as it was described by Mr. Allen, it corroborates his testimony and as far as the time is concerned, I think it’s certainly relevant to have a gun in his possession that matches the description by the victim, Allen, two weeks prior to the time in question.

The court went on to rule that *Cheeseboro* addressed the defendant’s own rap lyrics in the context of an admission of guilt and noted that, to avoid the issue entirely, the videos could be simply muted when presented to the jury and any need for the jury to revisit the evidence can be done in the courtroom as opposed to the deliberations room. (R. p. 426-427).

### **STANDARD OF REVIEW**

“In criminal cases, an appellate court sits to review only errors of law, and it is bound by the trial court’s factual findings unless the findings are clearly erroneous.” *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012). “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

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<sup>5</sup> There is no indication from any of the videos that this is a mask, as opposed to simply a toboggan style hat.

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.*

## ARGUMENT

- I. The ruling of the trial court was correct and entirely within its exercise of discretion. The video evidence was highly probative toward demonstrating Appellant’s possession of a distinctive firearm described by eyewitness Michael Allen as belonging to one of the assailants and the videos do not depict negative character or prior bad acts such that Rule 404 is not even applicable.**

The trial court addressed Rules 401, 403, and 404, and rightfully concluded that the evidence was admissible under each. The trial court was well within its discretion to admit the highly probative evidence in question.

“Under Rule 401, evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy.” *State v. Preslar*, 364 S.C. 466, 475, 613 S.E.2d 381, 386 (Ct. App. 2005). “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation

of cumulative evidence.” Rule 403, SCRE. “Unfair prejudice means an undue tendency to suggest [a] decision on an improper basis.” *State v. Spears*, 403 S.C. 247, 252–53, 742 S.E.2d 878, 881 (Ct. App. 2013). Here, the video evidence was properly admitted by the trial court as it corroborated a factual matter within the record and provided further evidence identifying Appellant as a participant in the crime. There is no “unfair” prejudice to Appellant, and to the extent any danger of such is argued to exist, it is indeed substantially outweighed by the probative value of the evidence: presenting Appellant in physical possession of a gun described by Mr. Allen just minutes before being shot at by the assailants.

The Exhibit 65 videos in question establish a number of important factual points for the jury. As argued during the trial, generally, they corroborate the testimony of Mr. Allen wherein he identified one of the culprits’ guns as being a red in color, Glock-style pistol, that had a laser pointer sight attached. However, the videos address these points, and others, in specific manners. First, given Appellant’s differing clothes from the other videos, Video 1 demonstrates that Appellant was in possession of this firearm on more than just the one occasion that Shy’Tavia happened to videotape him, thereby bolstering the inference that Appellant owns this gun and often carries it with him. Videos 2 and 4 demonstrate with *certainty* the distinctive *red color* of the gun. Such was not easily discernable in video 1. Additionally, these two videos show the *use of the laser pointer sight*, which was also not discernable in video 1. Video 3 shows Appellant *removing the clip and showing the loaded ammunition* for his gun. This evidence addresses any doubt raised by Mr. Chad Smith who noted that he could not be certain that the gun shown in Exhibit 64 was an actual firearm as opposed to a realistic replica.

These videos collectively only amount to approximately one minute and fifteen seconds of footage. The videos give the jury the opportunity to view the gun from separate angles and

establish different facts related to the firearm. They are not cumulative, and Shy’Tavia’s testimony is not an adequate substitute because her testimony may not address all of the above facts and would require a determination of credibility as opposed to allowing the jury to see and decide for themselves the various characteristics of the firearm. As such the trial court’s finding that the video evidence was probative toward corroborating Mr. Allen’s testimony, demonstrating Appellant’s possession and/or ownership of the gun, and demonstrating such in close proximity to the date of the crime were all well supported facts from the disputed evidence.

Additionally, there is little to no prejudicial value and no indication of prior bad acts that would render Rule 404 applicable. Character evidence is not admissible to prove the accused possesses a criminal character or has a propensity to commit the crime with which he is charged. *State v. Brown*, 344 S.C. 70, 73, 543 S.E.2d 552, 554 (2001); Rule 404(a), SCRE. Also, “[g]enerally, South Carolina law precludes evidence of a defendant’s prior crimes or other bad acts to prove the defendant’s guilt for the crime charged.” *State v. Haselden*, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (citing *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923)). Defense counsel gave little argument to the question of character evidence as it relates to Appellant’s possession of the gun itself, choosing instead to focus his arguments on the ultimately muted rap lyrics. But regardless, the videos do not demonstrate any crime or prior bad act by Appellant, as there was no showing of a violent act or that Appellant was not permitted to possess a firearm. The videos do not depict Appellant acting in a violent manner toward anyone. The videos do not even depict Appellant pointing the gun *at a person*, but instead he is pointing the gun at a camera for purpose of innocuous videos. As such, Appellant can only attempt to claim bad character evidence as to the “brazen manner” in which Appellant is *holding the gun*, and such falls well short of demonstrating any basis for a jury to misconstrue this evidence as a propensity to commit a murder

on the basis of bad character. Rule 404(a), SCRE. (“[e]vidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion.”); *State v. Perry*, 430 S.C. 24, 30, 842 S.E.2d 654, 657 (2020) (“Thus, Rule 404(b) prevents the State from introducing evidence of a defendant's other crimes for the purpose of proving his propensity to commit the crime for which he is currently on trial.”).

Nevertheless, even if there was some appreciable evidence of “bad character” within the videos, the trial court correctly found that the State had presented a “non-propensity” probative purpose for the evidence, and it was entirely within its discretion – and correct in its consideration – that the danger of unfair prejudice does not substantially outweigh the probative value of the evidence in this matter. The ability to provide video evidence of the uniquely featured gun described by the sole eyewitness to the crime is probative value that far outweighs any perceived risk of prejudice identified by Appellant in this case. To the extent Rule 404(b) can even be said to apply, there is no indication of prior bad acts, and the evidence would otherwise *strongly* support evidence of identity as a valid exception to the rule.<sup>6</sup>

As such, the trial court correctly concluded that the videos were relevant and admissible evidence that were not subject to exclusion under Rule 404. Appellant’s convictions and sentences should therefore be affirmed.

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<sup>6</sup> While Respondent is confident in its primary arguments stated above, as a matter of thoroughness the State would also argue that any alleged error on the part of the trial court would be harmless in light of the overwhelming evidence against Appellant presented at trial. *State v. Haselden*, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (“The erroneous admission of character evidence is harmless beyond a reasonable doubt if its impact is minimal in the context of the entire record.”).

**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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