STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Honorable Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2024-001362

THE STATE, ...RESPONDENT

v.

JAVERIS TREMANE WILLIAMS, ...APPELLANT.

AMENDED INITIAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in admitting into evidence a jail house call that was not relevant to the crimes charges in which appellant used numerous expletives and inciting language in encouraging witnesses to tell the truth during trial?

2. Whether the trial court erred in admitting recorded statements from Frazier, over objection of counsel, as dying declarations when there was no evidence that Frazier was motivated by an extreme and powerful belief that his death was imminent?

3. Did the trial court err in allowing the state to recall its lead investigator to admit prior inconsistent statements of one of the state's witnesses when that witness was not provided the opportunity to admit, deny, or explain the alleged prior inconsistent statement?

4. Did the trial court err in sentencing appellant under S.C. Code § 16-23-490 (2010) in violation of the statutory prohibition on such a sentence following a life without parole sentence?

STATEMENT OF THE CASE

During their October, 2019 term, a Jasper County grand jury indicted Javeris Tremane Williams (Appellant) with murder, armed robbery, and possession of a weapon during a violent crime for the shooting death of Samquan "Chuck" Frazier. (R. * Indictments). A jury trial on the charges was held August 12–14, 2024, before the Honorable Carmen T. Mullen. Charlie Johnson, Esq., represented Applicant. Assistant Solicitor Trasi Campbell represented the State. The jury found Appellant guilty on all charges. (Tr. 586). The trial court sentenced Appellant to a life sentence for murder, thirty years for armed robbery, and five years for the weapons offense; all concurrent. (Tr. 598). This appeal now follows.

STATEMENT OF FACTS

On the morning of September 30, 2018, Samquan "Chuck" Frazier (Victim) was found lying in a ditch on the side of a country road[1] dying and "barely conscious" from a single "through and through" gunshot wound to his upper chest. When law enforcement arrived and asked the Victim what happened, he said "Hustle Man" robbed and shot him. (Tr. 169–174, 177–180; State's Ex. 13 (Gibson Body Cam) at 00:50–01:05, 03:40–04:00; State's Ex. 14 (Williams Bodycam)). Unfortunately, while being treated, Victim died from his injuries. (Tr. 181–183). The victim advised first responders that he was from Estill, SC. (Tr. 206). Lead investigator Ethan Rodgers reached out to an officer that worked in Estill area, Michael Lassiter, and Lieutenant Lassiter advised that he did know the victim, and that "Hustle Man" was a street name for Javeris Williams. (Tr. 184–187, 206–207). With that information, and while still on-scene, Inv. Rodgers looked up Appellant's public Facebook account which appeared under the "Hustle Man" name, and at trial, Inv. Rodgers described the following: "the last post the defendant made on his Facebook account was a video, and it showed the defendant, along with the victim and two others inside of a vehicle . . . traveling down the road with the defendant driving." (Tr. 210). The other passengers were Daevon Smith in the front passenger seat, Victim in the rear passenger seat, and Henry Williams in the seat behind Appellant.[2] (Tr. 208–211; State's Ex. 16 (Facebook Video)).

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[1] The testimony states that Victim was found "on Pineland Road, off of Highway 3 in Jasper County, a few miles outside of Hampton." (Tr. 205, ln. 23-Tr. 206, ln. 1).

[2] Appellant references Reginald Jenkins as the rear passenger next to Victim rather than Henry Williams. Although Jenkins does end up in this car at some point after leaving Club Karma, the record reflects that Jenkins left Karma in a different car and that the people who left Karma in Appellant's vehicle, as seen in the video, are Smith, Victim, and Williams. (Tr. 257–262, 301, 316–318, 323, 336–338; State's Ex. 16).

Later that day, Inv. Rodgers visited Appellant's Facebook[3] again and saw that a new video had been posted, but the other video was no longer there.[4] In this second video, Appellant was driving, Smith was in the front passenger seat, and Reginald Jenkins was in the back seat.[5] (Tr. 212–213). In the first video, Victim can be seen wearing the same shirt that was recovered at the crime scene with a single bullet hole in it. As described by Inv. Rodgers, Victim's shirt was clearly identifiable based on custom "Free Brant" and "Chucko" (Victim's nickname) branding on the front and back, respectively. (Tr. 216–224). Investigators were not able to find any shell casings or projectiles on scene. (Tr. 228–229).

As part of the investigation, officers obtained Appellant's full Facebook records. One message sent by Appellant on October 3 read: "Should I call or not. I seen they have me on the Internet." After obtaining arrest warrants, investigators reached out to the U.S. Marshal services to locate Appellant—he was later found October 8 in Columbia. The cell phone recovered from him at the detention center had only been activated since October 3, the same day law enforcement sent out public notice of Appellant being a suspect. (Tr. 232–239).

The testimony elicited at trial showed that Victim, Appellant, Jenkins, Smith, Henry Williams, and other witnesses were all at a "yard party" the night before Victim was found dead. (Tr. 246–247, 287, 292, 314, 320–322, 332). At the party, Victim was seen playing dice and winning money, about $1500. (Tr. 317, 333). Later that evening, Victim, Appellant,

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[3] Appellant's account had a registered name, "Hustle Mane," a vanity name of "Hustle.mane.142," and two registered email addresses: (1) hustle.mane.142@facebook.com and (2) williamsj67@ymail.com. (Tr. 231–232).

[4] The State's theory was that Appellant overwrote, in a sense, this video showing him with the Victim with a less implicating video showing him driving without Victim.

[5] Chronologically, this video was filmed prior to the video where Victim can be seen in the back seat, likely when Appellant was leaving the "yard party" and going to Club Karma, discussed further *infra*.

and others left the party to go to Club Karma, a strip-club just across the river from Savannah, Georgia. Appellant drove with Smith and Jenkins as seen in State's Ex. 15 (the second video uploaded to Appellant's Facebook) while Victim rode with his cousin and Henry Williams. At some point on the way to Karma, Appellant switched seats with Jenkins so he could drive instead, and they also stopped at a Pilot gas station to pick up alcohol. (Tr. 247–249, 288, 294–296, 333–335). Appellant, Victim, and others were at the club until roughly 6:00 AM the following morning, departing shortly before closing. Appellant left Karma driving Smith, Victim, and Henry Williams. (Tr. 301–302, 316, 336–338). Eventually, Jenkins switched place with Henry Williams in the back of Appellant's vehicle. (Tr. 297–298, 307–310, 317–318, 323).

From there, Appellant drove Smith, Victim, and Jenkins to Appellant's trailer—after which Jenkins got out and departed in his own vehicle. Appellant, Smith, and Victim remained in Appellant's vehicle. At this point only Appellant was awake. (Tr. 303–305, 405–406). Smith testified that he "woke up to a gunshot" and saw "[Victim] and Hustle . . . tussling over the gun." Smith then "heard another gunshot" and "saw [Victim] fall." Appellant then told Smith to get back in the car, threatening to "leave [him] out here." (Tr. 339, ln. 2—Tr. 340, ln. 19). Smith noted it was daylight by this point. After leaving Victim for dead, Appellant drove back to his trailer with Smith and had already began taking steps to conceal evidence. As Smith recounts, Appellant (1) took Smith's phone and turned it off before giving it back to him, (2) was wearing gloves while driving back to the house, (3) took Smith's clothes and made him put on new clothes, (4) left the trailer for "ten minutes" after putting Smith's clothes in "a bag," and (5) returned with "a dust pan and broom." (Tr. 341, ln. 3—Tr. 343, ln. 15).

At trial, Appellant presented a different story of what happened once they (him, Smith, Victim, and Jenkins) got back to his trailer from PI's house. At that point, Appellant claimed that

his cousin, Dontae Collins, picked him up from his trailer to take him to his girlfriend's house in Blackville—leaving Smith and Victim alone. (Tr. 460–463, 491–499). Appellant's only other witness, Donovan Riley, claimed he was at Appellant's trailer that morning "clean[ing] his yard and feed[ing] his dogs" when he saw Victim and Smith arguing. Riley stated he "heard a loud pop" and then ran away because he was scared. Riley admitted to not having told anybody this story until a few days before trial when he reached out to Appellant's counsel. (Tr. 477–479, 482–485).

At the end of trial, the jury convicted Appellant as indicted.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Johnson*, 413 S.C. 458, 776 S.E.2d 367, 371 (2015). "The admission or exclusion of evidence is a matter within the trial court's sound discretion, and an appellate court may only disturb a ruling admitting or excluding evidence upon a showing of a 'manifest abuse of discretion accompanied by probable prejudice.'" *State v. Commander*, 396 S.C. 254, 262–63, 721 S.E.2d 413, 417 (2011) (quoting *State v. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 848 (2006)). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006).

"A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances." *State v. Adams*, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003). "A trial court has particularly wide discretion in ruling on Rule 403 objections." *State v. Lee*, 399 S.C. 521, 527, 732 S.E.2d 225, 228 (Ct. App. 2012).

ARGUMENT

1. **The trial court did not abuse its discretion in admitting a jail call where Appellant discussed the facts of the case and made threatening remarks as to upcoming testimony where the call participant, though unknown, was in contact with a witness set to testify the following day and the witness gave inconsistent testimony the day after the phone call.**

Appellant argues that a thirty-second audio clip of Appellant talking about facts of the case and making threatening remarks regarding upcoming testimony to an unknown person in contact with a witness set to testify the following day is irrelevant and overly prejudicial. Appellant's arguments regarding both relevance and prejudice not only facially fail on the facts of this case, but they also fail to properly consider the trial court's role and this Court's standard of review.

Relevant Facts:

On the second day of trial, the State presented testimony from witnesses who had been with Appellant and Victim in the hours leading up to Victim's death. One of those witnesses was Reginald Jenkins who, as will be discussed further *infra* in Argument III, gave an account regarding what happened after everyone left "PI's house" that differed from what he initially told law enforcement. (Tr. 297–298, 303–305; 405–406). The following morning, before testimony resumed, the State brought to the Court's attention a phone call Appellant had made from jail the night after the *first* day of trial:

> I provided the Court the clip within that jail phone call where he is talking about the facts in this case. The location of parties in this case. He's talking about a time of 7:30 not being right, and that he is asking about and there's talk about Reg who testified yesterday, Reginald Jenkins, and Reginald getting in touch with the man that [Appellant] was talking to. And [Appellant] says ... to the effect that, *Those MFs need to go in there tomorrow and bust those MFs heads.* And essentially, *Get it right, get it straight.* You know, *Not 7:30.*
>
> And so I went back and looked at the testimony, and, again, there was no

> testimony about 7:30 being an approximate time of when the victim was killed from those witnesses that testified yesterday.
>
> However, ... in my opening, I set up a time line, and that time line began with my assertion that around 7:30 in the morning was when the killing occurred. And so he's clearly talking about evidence in the case. The facts, the State's time line, and what the witnesses need to do when they get in there tomorrow. And that sounds a little bit like collusion and manipulation of State witness testimony.

(Tr. 368, ln. 12—Tr. 369, ln. 14).

Appellant objected on the basis that the jail call was not relevant and that it would otherwise be prejudicial due to Appellant's use of profanity:

> 7:30 came from the prosecution's opening statement. Her statement is not evidence. My client ... He did use some cuss words, but there's one word in there that she left out. He said that, *They need to tell the truth.* That's not coercion. That's all he said. He didn't threaten anybody. He didn't say anything. And it's our position it is irrelevant. How is it relevant to anything that went on in this case? And it is our position the State have [sic] to show relevance to that. Other than that, it's extremely prejudicial and accumulative. It's just he said something on the phone. They still have to show relevance. And he says nothing threatening to anybody.

(Tr. 369, ln. 17—Tr. 370, ln. 7). The State replied, citing *State v. White*, 437 S.C. 490, 879 S.E.2d 21 (Ct. App. 2022), noting that the probative value of the jail call is not substantially outweighed by the risk of unfair prejudice and once again emphasizing that Appellant was talking about the timeline and facts in the case.

The Court agreed with the State citing both *White* and *State v. Martin*,[6] also noting that the phone call was an admission by a party opponent. (Tr. 370–371). Following the testimony of the medical examiner, the State introduced the jail call clip into evidence as State's Ex. 42.

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[6] Respondent agrees with Appellant that the Court was likely citing *State v. Martin*, 403 S.C. 19, 742 S.E.2d 42 (Ct. App. 2013).

subject to Appellant's prior objection.[7] (Tr. 401–402).

Discussion:

"All relevant evidence is admissible." *State v. Pagan*, 357 S.C. 132, 591 S.E.2d 646 (Ct. App. 2004) (citing *State* v. *Saltz*, 346 S.C. 114,551 S.E.2d 240 (2001); *State v. Aleksey*, 343 S.C. 20, 538 S.E.2d 248 (2000); *State v. Adams*, 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003); Rule 402, SCRE). "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." *Id.* (citing *In re Corley*, 353 S.C. 202, 577 S.E.2d 451 (2003); *Adams*, 354 S.C. at 378, 580 S.E.2d at 794; *State v. King*, 349 S.C. 142, 561 S.E.2d 640 (Ct. App. 2002)). "Although relevant, evidence may be excluded if its probative value is *substantially outweighed* by the danger of unfair prejudice." Rule 403, SCRE (emphasis added). "The determination of the prejudicial effect of the evidence must be based on the entire record and the result will generally turn on the facts of each case." *State v. Gillian*, 373 S.C. 601, 609, 646 S.E.2d 872, 876 (2007). "Evidence is unfairly prejudicial if it has an undue tendency to suggest a

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[7] The entire jail call clip is reproduced as follows: The entire jail call clip is reproduced as follows:

> **Appellant:** How Chisholm and everybody is, everybody G's and shit?
> **Unknown male:** Yeah, yeah, yeah, yeah, yeah.
> **Appellant:** Oh, ok, they ain't . . .
> **Unknown male:** ... so Reg just had . . . you know Reg *had just called,* I told him *I'd call him back.*
> **Appellant:** Word, word, yeah just . . . and then *they talking about 7:30—them boys better go in there and bust them motherfucker's heads and tell them motherfuckers the truth* motherfucker 7:30 . . . we was in the *motherfucking goddamn Estill probably going to fucking* Hampton . . . if not, um, *already down there* you feel me?
>
> Man that motherfucker talking about that *shit happened at 7:30* . . . that motherfucker . . .

(State's Ex. 42) (emphasis added).

decision on an improper basis, such as an emotional one." *State v. Wilson*, 345 S.C. 1, 7, 545 S.E.2d 827, 830 (2001).

Like many other states, South Carolina recognizes that evidence of witness intimidation is admissible to show consciousness of guilt. *State v. Edwards*, 383 S.C. 66, 71–73, 678 S.E.2d 405, 408 (2009). And *White* recognized that a jail phone call where the defendant talked about facts in the case was relevant to show White's consciousness of guilt, while also emphasizing that the "test for relevancy is not stringent, and its standard is not difficult to vault." *White*, 437 S.C. at 495, 879 S.E.2d at 24 (citing *State v. Sweat*, 362 S.C. 117, 126–27, 606 S.E.2d 508, 513 (Ct. App. 2004)).

Here, Appellant made threatening remarks regarding upcoming witness testimony that was going to discredit his claim that he got out of his car *and left* after arriving at his trailer (leaving Smith and Victim *alone)* that morning. The following day, Reginald Jenkins ("Reg" in the phone call), when asked about what happened after getting in Appellant's car at "PI's house" (the crucial point of his testimony), gave an ambivalent response that contradicted his prior statement to law enforcement, later introduced at trial and at issue *infra* in Argument III.[8] (Tr. 297–298, 405–406). Based on this, the jail call is not only probative as to one possible explanation for Jenkins' inconsistent testimony,[9] but it is also relevant to showing Appellant's consciousness of his own guilt—trying to sway/corrupt upcoming testimony unfavorable to his defense. The call is also probative for the simple fact that Appellant is

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[8] On cross-examination, Jenkins only further compounded the inconsistency of his statement on direct by claiming that, once they got to "PI's house," *Tyree Barker* switched places with Henry Williams in Appellant's car, and then went back to saying he was in Appellant's car going back to Appellant's trailer-with both him and Appellant then getting out of the car leaving Smith and Victim alone. (Tr. 302–306).

[9] This point is further discussed *infra* with respect to Rule 608(c), SCRE in Argument III.

disputing the State's timeline with his own disgruntled statements to an unknown person over the phone.

Appellant's reliance on *State v. King*, 422 S.C. 47, 810 S.E.2d 18 (2017) is misplaced. There, our Supreme Court held that admitting a fifteen-minute phone call "riddled with profanity, racial slurs, and impermissible references to King's prior bad acts" was unduly prejudicial to the defendant and therefore error. *Id.* at 69, 810 S.E.2d at 29–30. The Court noted the relatively low probative value of the clip showing King to be the owner of a particular cell phone—where there was ample other evidence already connecting King to the phone—compared to the substantially prejudicial effect of hearing the profanity ridden conversation. *Id.* However, the facts of *King* are readily distinguishable from this case. First, the clip at issue in *King* was fifteen minutes long almost 30 times as long as the thirty-second clip at issue here. This is simply not a case where the profanity and other information putting Appellant in a bad light. Second, the trial court in King "refused to listen to the recording prior to publishing it to the jury"—meaning it essentially failed to engage in a Rule 403 analysis. *Id.* at 68, 810 S.E.2d at 29. In this case the trial court engaged in a full colloquy with the State and defense counsel regarding the contents of the clip and listened to the condensed version in its entirety before finding it admissible. (Tr. 368–372).

Finally, the probative value of the clip at issue here is strong relative to its minimally prejudicial effect, the opposite of what the Court found in *King*. Appellant's own statements regarding "7:30" not being the right time (and being at a different location), potential witness intimidation/collusion, and a potential explanation for Jenkins' inconsistent testimony were probative for issues already before the jury. Whatever prejudice Appellant claims to have suffered

from the jury hearing some profanity or knowing Appellant made a call from jail is simply minimal in comparison. And as *State v. Dial*, 405 S.C. 247, 259–60, 746 S.E.2d 495, 501–02 (Ct. App. 2013) recognizes, once a trial court has appropriately applied the 403-balancing test, this Court should only reverse in "exceptional circumstances." This is not an exceptional circumstance.

The trial court appropriately acted within its discretion to admit the thirty-second clip, and this Court should affirm.

II. The trial court did not abuse its discretion by admitting recorded statements from victim saying that Appellant robbed and shot him as dying declarations because the record supported that Appellant anticipated his death from a point-blank shot to the chest and difficulty in breathing.

Appellant argues the trial court committed reversible error in failing to suppress dying declarations made by Victim implicating Appellant as his killer, relying mainly on the position that Victim did not believe he was dying and that he was still intoxicated. Again, Appellant misunderstands the trial court's role in the admission of evidence and conflates what is required for admissibility with *credibility* or weight of the evidence.

Relevant Facts:

Before trial, the State sought determinations from the trial court on the admissibility of certain pieces of evidence, including the dying declarations at issue in this appeal—State's Exs. 13 (Gibson Bodycam) and 14 (Williams Bodycam) respectively. Defense counsel first objected on the basis that Victim did not believe his death was imminent:

> [I]t is our position that it is not a dying declaration. Case law states that the victim. . . has to have knowledge or that death is imminent. . . . that is not the case in this matter. . . . When Officer Gibson first arrived, he was laying down. They was putting pressure on him and then Officer Gibson went to ask him questions. But at the time there was nothing showing in the record that would indicate that the victim - its required that the victim subjectively believe that he is in imminent danger of dying then. There is nothing in the record to indicate that. He asked for water and he answered the questions. That was it. The officer did not tell him that death was imminent and to question him and this - looking at the totality of the circumstances, there is nothing there. It doesn't meet the requirements for dying declarations.

(Tr. 113, ln. 19–Tr. 114, ln. 21).

The State responded by emphasizing that the victim need not "directly express that there is some awareness of the severity of his condition" and that "state of mind can be inferred from other facts and circumstances." In support of the State's "state of mind"

argument, counsel cited the following:

> He's been shot in the chest. He's laid there for, you know, like several hours. And so I think certainly – He's saying, *Please help me. I can't breath.* He's aware that he can't breath. So he has awareness that he has this crushing in his chest. And he knows he" been shot in the chest, and *Help me* again and again.

(Tr. 115, ll. 2–19).

Defense counsel again tried to emphasize that Victim never directly stated that he was in fear of dying, but the trial court rejected this position:

> Well, sir, in *State* v. *Mahone*, it does state that a victim does not have to directly express an awareness of his condition. His state of mind can be inferred from the facts and circumstances. And the fact that he was lying in the ditch, he did have a through-and through gunshot wound, he was losing blood, and the blood was sitting in his chest cavity causing it to put pressure on his lungs where he kept saying he couldn't breath, he couldn't breath. And, in fact, he is put in the EMS, and then they are going to Life Flight him, but they take off the Life [Fl]ight because he has already coded and they have a rule that you don't take someone that's coding on a Life Flight. So, in fact, death was impending, and in fact, he did die.
>
> I'm going to let the jury determine from the evidence in the case what inferences can be made. I think it's proper for me to give it to the jury or allow them to use it.
>
> ... you can infer the decedent's state of mind from the facts and circumstances surrounding the case. And the fact he was shot, the fact that he couldn't breath, I think it['s] admissible.

(Tr. 117, ll. 4–18; Tr. 118, ll. 13–23).[10]

Defense counsel also argued that Victim's potential intoxication was another ground to prevent the dying declarations from being admitted—noting that the medical examiner's report indicated that Victim had a BAC of .06 at the time of autopsy. (Tr. 119). The State indicated that the medical examiner would testify later in trial regarding his toxicology findings, but neither the Court nor the defense requested that the examiner's testimony be proffered for purposes of admissibility. The court ultimately stuck to its initial determination that the videos would be

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[10] Instead of a "*Mahone*" case, *State v. McHoney*, 344 S.C. 85, 544 S.E.2d 30 (2001) stands for the direct proposition the trial court was citing, and is likely the intended case cited.

admissible, and the videos were subsequently admitted into evidence. (Tr. 119–123, 166–168). The medical examiner would not testify regarding the toxicology findings until much later in the trial. (Tr. 385–387, 390–393).

Discussion:

Under Rule 804(b)(2), SCRE, a statement made under the belief of impending death, also known as a dying declaration, is admissible as an exception to the general prohibition on hearsay. The rule defines such as "a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death." *Id.* Under South Carolina law, a declarant "*does not have to express,* in direct terms, his awareness of his condition for his statement to be admissible as a dying declaration. The necessary state of mind can be inferred from the facts and circumstances *surrounding* the declaration." *State v. McHoney*, 344 S.C. 85, 93, 544 S.E.2d 30, 33 (2001) (emphasis added). Among other circumstances, the "nature of the wound" and "the declarant's critical condition" are relevant for showing the declarant's "awareness of approaching death." *Id.* (citations omitted). The basis for this hearsay exception comes from the fact that a "belief in imminent death is an extreme and powerful belief' that "carries with it a level of trustworthiness ..." *State v. Brown*, 421 S.C. 337, 344, 806 S.E.2d 724, 728 (Ct. App. 2017). The length of time the declarant lives after making the statement is irrelevant. *McHoney*, 344 S.C. at 93, 544 S.E.2d at 34.

In this case, there was clearly enough evidence for the trial court to determine that Victim's statements were made under the belief of impending death and therefore committed no error in allowing such statements to be admitted into evidence. Although Appellant cites *McHoney* for the proposition that there need not be a direct statement from the

declarant regarding his awareness of his impending death, his argument continues to assume that such a statement is required: "Frazier gave no indication during the recorded interviews that he felt death was imminent. While he did complain about difficulty in breathing and thirst, he made no comment or indication that he believed he was facing imminent death." (Brief of Appellant at 13). This is simply a repetition of trial counsel's argument that the trial court properly rejected. Instead of looking for a direct statement by Victim that showed he was directly aware he was dying—which *McHoney* specifically does not require—the court properly assessed the relevant circumstances surrounding the statements, including the nature of his wound and his critical condition.

Additionally, Appellant's reliance on *State v. Brown*, 421 S.C. 337, 806 S.E.2d 724 (Ct. App. 2017) for its facts is misplaced. There, the victim Davon Goodwin sustained a gunshot wound to the abdomen, whereafter he arrived at the hospital and underwent immediate surgery. *Id.* at 339, 806 S.E.2d at 726. A few days later, he was extubated and remained in the ICU. *Id.* at 340, 806 S.E.2d at 726. The following day, investigators visited Goodwin and conducted a photo line-up, where Goodwin identified Brown as his assailant. *Id.* However, after being moved to "the floor" and beginning recovery, including physical therapy, Goodwin unexpectedly died from a pulmonary embolism. *Id.* at 340–41, 806 S.E.2d at 726. As this Court summarizes, the trial court found the identification was not made under the belief of impending death for the following reasons:

> [T]he medical records indicated Goodwin "was *improving and was not in imminent danger of death*" at the time he gave the identifying statement. The order referenced several points in the medical record, including Goodwin was "extubated on the 28th," "'adequate on the floor, transferred out of [the intensive care unit], was making strides with physical therapy, and ambulating in the hall'"; "[h]e received a physical therapy consult on April 29th, and began physical therapy on April 30th "; "[o]n that day, he tolerated 5-15 minutes of uninterrupted exercise"; and his "May 4th death was listed as sudden and unexpected."

Id. at 342, 806 S.E.2d at 727 (second and subsequent alterations in original) (emphasis added). This Court found dispositive the fact that Goodwin had already underwent surgery and was in the recovery process when the statements were made. *Brown*, 421 S.C. at 345,806 S.E.2d at 729. The facts of this case are readily distinguishable from *Brown.* Victim was dying from his wounds—struggling to breathe and could barely move, pleading for his life—lying in a ditch half-naked and later in an ambulance on the way to get "Life Flighted" to the nearest trauma center. There were no reasonable prospects of rehabilitation, recovery, or physical therapy when Victim was in a critical condition being rushed to the hospital. There was certainly little hope of recovery when Victim subsequently coded. This case is the complete opposite of *Brown* and is simply more in line with the facts of *McHoney.*

Appellant also argues that evidence of Victim's intoxication should have prevented the admission of the declarations—for some reason citing testimony of the medical examiner that appears 200 pages in the transcript *after* the dying declarations were *already admitted* into evidence. (Brief of Appellant at 13–14). First, this argument conflates what is required for admissibility with what goes to credibility or weight of the evidence. In this case, the trial court was primarily concerned with finding that the statement was made under the belief of impending death. There is no sub-requirement for admissibility of a dying declaration that the declarant be below a certain BAC level or have a clean toxicology report.[11] Evidence of intoxication should only go to credibility or believability of the

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[11] Other cases where intoxication of the declarant was made an issue by an appellant were discussed in terms of credibility, not admissibility. *See Hammon v. State*, 2 S.W.3d 50, 52–53 (Ark. 1999) ("Appellant makes no argument that the statements at issue do not meet those requirements of dying declarations; rather, appellant's argument centers on his contention that the dying declaration should be *admissible only if it is otherwise reliable.* . . . Appellant urges that 'competent' as used in those cases has the same meaning as 'reliable,'

evidence which is solely within the purview of the jury once the evidence is deemed admissible and subsequently admitted into evidence. Notably, by the time defense counsel brought up Victim's intoxication as a point against admission, the trial court had already found the statements admissible. (*See* Tr. 117, ll. 4–18; Tr. 118, ll. 13–23, Tr. 119–123). Second, even assuming toxicology was relevant for purposes of admissibility, Appellant or the court could have requested to proffer the testimony of the medical examiner. Neither did so, meaning that only the discussion of the .06 BAC was before the court at the time of admitting the evidence. The medical examiner's discussion of the toxicology findings—which Appellant argues provided the court "no guidance"—did not happen until much later in the trial. (*See* Tr. 119; 385–387, 390–393). Accordingly, the trial court properly rejected Appellant's intoxication argument.

The record clearly showed that Victim believed he was about to die, and the trial court did not abuse its discretion in finding so. This Court should affirm.

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and that the victim's testimony in this case is unreliable *because of the drug metabolites* in his urine. . . . We disagree with appellant's interpretation. . . .") (emphasis added); *State v. Johns*, 132 N.W. 832, 835–36 (Iowa 1911) ("Defendant claimed that deceased was under the influence of intoxicating liquor, . . . at the time he made his dying declarations, and that the trial court should have *told the jury* to take his condition in this respect into account in *weighing his declarations*.") (emphasis added); *State v. Palmer*, 176 P. 547, 549 (Wash. 1918) (discussing appellant's request of a jury charge on declarant's intoxication going to *weight* of the evidence).

III. Appellant failed to preserve the issue of impeachment error under Rule 613(b); even so, the trial court did not abuse its discretion in permitting the State to recall its lead investigator for testimony impeaching the witness on the basis of bias.

Next, Appellant argues that the trial court erred in allowing the State to recall its lead investigator to admit a prior inconsistent statement of Reginald Jenkins when Jenkins was not provided an opportunity to admit, deny, or explain the alleged prior inconsistent statement. However, because Appellant failed to specifically object on this Rule 613(b) ground, this issue is waived for appellate review. Further, even assuming the issue was preserved, Appellant's arguments fail because the testimony was also admissible as evidence of bias under Rule 608(c), and any perceived error in admitting the extrinsic evidence would be harmless.

Relevant Facts:

On the second day of trial, after the phone call discussed *supra* in Argument I but *before* the phone call came to the State's and Court's attention on day three, Jenkins testified as a State's witness. (Tr. 291–306). At the end of his direct testimony, the following exchange between the State and Jenkins occurred:

> Q. And Tyree Barker, where did he take you?
>
> A. I think we stopped in Estill.
>
> Q. In Estill?
>
> A. Yeah. And *then I hopped back in the car with Javeris.*
>
> Q. Okay. So you went to Estill and ... did somebody get out Javeris's car so you could get in?
>
> A. Yeah.
>
> Q. What was going on with that?
>
> A. Henry [Williams] got out of the car.

Q So the defendant, Daevon, Samquan, and Henry rode back to Estill together.

A. The only reason why I got out of that car with Javeris is because me and him got in an argument in the club. But it wasn't no serious argument. I had lost the keys in the club. I was getting a lap dance.

Q. Okay ... So you got out up in Estill of Tyree's car and you hopped in the defendant's car, right?

A. Correct.

Q. Why are you hopping in his car at that point?

A. I lost the keys in the club.

Q. Okay. And the victim, Samquan, is in the back seat with you; is that right?

A. Yes, ma'am.

Q. And do you remember where you got out of the defendant's car those early morning hours?

A. *I believe it right around the corner from his house actually at PI's.*

Q. At PI's house?

A. Yeah.

Q. All right. Did you get a call later on September 30th asking you to come pick somebody up?

A. *No, ma'am.*

Q. You don't recall that?

A. Huh-uh.

(Tr. 297, ln. 10—Tr. 298, ln. 24) (emphasis added).

Later, after the State brought the jail call to the court's attention and after the medical examiner's testimony, the State decided to recall investigator Rodgers to recount Jenkins' prior inconsistent statement:

> [T]he State has decided after we play the jail call to recall [Rodgers] since Reggie's testimony yesterday here in court was substantially different from the testimony that he gave him during the course of the investigation; particularly one section that he changed dramatically, which was, originally, he reported that he had gotten to the house, he got in his car, was getting ready to leave, he called over to the defendant and Smith and the victim, said, *Where you all going?* And the defendant said, *We're going to his mama's house,* and he left. So he left all three individuals in the car.

(Tr. 397, ln. 16—Tr. 398, ln. 5).

Defense counsel objected on the basis that the State was improperly impeaching its own witness:

> Your Honor, I would object to that. The State had their witness on. He testified. He has been released. That was the State's own witness they put up. So they're putting another detective, the same detective that's already testifies [sic], to then impeach their own witness. . . .

(Tr. 398, ll. 10–16). The Court and counsel for both parties then engaged in the following colloquy, but notably, Appellant never raised Rule 613(b) or argued that the State failed to provide a foundation for admitting extrinsic evidence of Jenkins' prior inconsistent statement:

> The Court: Well, it came out that he had given two inconsistent statements originally. Because it came out - this is talking about Reginald, right?
>
> Ms. Campbell: That's correct.
>
> The Court: Yeah, he had originally testified, the first one he gave, he knew nothing about nothing, right? And then it changed. I think she can recall him. . .
>
> Mr. Johnson: Just for clarification, but is she - is he allowed to bring up new evidence that he didn't originally testify to before?
>
> Ms. Campbell: No, that is up and down. That is zero focused. When I bring him back, that's the only reason I'm putting him back up, is to counter that testimony that was given here yesterday. Again, based upon the jail phone call, that I learned about last night.
>
> The Court: And Rodgers - correct me if I'm wrong, Rodgers testified before Reginald, correct?
>
> Ms. Campbell: Absolutely.

The Court: Okay, I just wanted to make sure.

Ms. Campbell: Yeah.

The Court: Okay. Yeah, he can go ahead and testify. That's fine.

(Tr. 398, ln. 17–Tr. 399, ln. 20).

When Rodgers was later called to relate the prior inconsistent statement,[12] Appellant made an objection based on lack of personal knowledge that was overruled and Rodgers was allowed to relate the statement, but there were no further objections based on Rule 613(b). (Tr. 405–406).

Discussion:

"A decision to admit extrinsic evidence of a prior inconsistent statement will not be reversed absent a manifest abuse of discretion that prejudiced the appellant." *State v. Carmack*, 388 S.C. 190, 201, 694 S.E.2d 224, 229 (Ct. App. 2010) (citing *State v. Blalock*, 357 S.C. 74, 78,591 S.E.2d 632, 635 (Ct. App. 2003)). Under Rule 613(b), SCRE, extrinsic evidence of a prior inconsistent statement is not admissible "unless the witness be permitted to admit, deny, or explain a prior inconsistent statement." *State v. McLeod*, 362 S.C. 73, 81, 606 S.E.2d 215, 219 (Ct. App. 2004).

However, "[a]s an initial matter, in order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge." *Carmack*, 388 S.C. at 200, 694 S.E.2d at 229 (citing *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003)). "Arguments raised for the first time on appeal are not preserved for our review." *Id.* (citing *Knight v. Waggoner*, 359 S.C. 492, 496, 597 S.E.2d 894, 896 (Ct. App. 2004)).

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[12] *See* Tr. 406, ll. 16–20) ("Reginald Jenkins's statement was that the defendant, the victim, and Daevon Smith remained inside the defendant's vehicle, and Reginald Jenkins, himself, was the only person to get out of it.").

Furthermore, a "party must have a contemporaneous and specific objection to preserve an issue for appellate review" and "the failure to do so amounts to a waiver of the alleged error." *Moses v. State*, 442 S.C. 263, 898 S.E.2d 174 (Ct. App. 2024) (quoting *State v. Sheppard*, 391 S.C. 415, 421, 706 S.E.2d 16, 19 (2011) and *State v. Geer*, 391 S.C. 179, 193, 705 S.E.2d 441, 448 (Ct. App. 2010)) (cleaned up, emphasis added).

In this case, the solicitor did not go through the proper steps required under Rule 613(b) to admit Jenkins' prior inconsistent statement through extrinsic evidence.[13] However, Appellant's argument is not preserved for review because Appellant's counsel did not object on Rule 613(b) grounds. Instead, he objected on the basis that a party cannot impeach its own witness, a now-defunct common law rule that has not existed since the adoption of the South Carolina Rules of Evidence.[14] What followed this objection was a brief discussion regarding the two inconsistent statements where Appellant only chimed in to ask about the scope of Rodgers' proposed recall testimony—but there were no further objections.[15] (Tr. 397–399). When Rodgers later testified, Appellant made one last objection based on lack of personal knowledge based on how the State asked their question, but this was also overruled—and Appellant does not argue error in this

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[13] In fact, the call at issue—made by Appellant—was not made until August 12th, the first day of trial and the solicitor did not learn of the call until after the first day proceedings during the overnight recess from the second day of trial. (Tr. 399, 401). The witness, Inv. Rogers, was then re-called in response to the questions posed to and answers (different from his statements during investigation) given by Jenkins the day before. (Tr. 397, 399). Inv. Rogers testified before Jenkins. (*See* Tr. 399).

[14] *See Okatie River, L.L.C. v. Se. Site Prep, L.L.C.*, 353 S.C. 327, 337, 577 S.E.2d 468, 474 (Ct. App. 2003) ("Enacted in 1995, Rule 607, SCRE provides: 'WHO MAY IMPEACH. The credibility of a witness may be attacked by any party, including the party calling the witness.' Rule 607, SCRE. Parties may attack the credibility of their own witnesses without having to show surprise. *Id.*").

[15] "Mr. Johnson: Just for clarification, but is she - is [Rodgers] allowed to *bring up new evidence* that [Jenkins] didn't *originally testify to before?*" (Tr. 399 ll. 2-5) (emphasis added).

ruling. (Tr. 405–406). Accordingly, because Rule 613(b) was not argued at trial, Appellant should not be permitted to argue so here on appeal. While a "party need not use the exact name of a legal doctrine in order to preserve it, . . . it must be clear that the argument has been presented on that ground." *Dunbar*, 356 S.C. at 142, 587 S.E.2d at 694 (citing *State v. Russell*, 345 S.C. 128, 546 S.E.2d 202 (Ct. App. 2001)). This simply did not happen here.

However, even assuming Appellant preserved this issue for appeal, which Respondent does not concede, the Rodgers' recall testimony would also be admissible as bias or motivation evidence. Rule 608(c), SCRE states that "[b]ias, prejudice, or *any motive to misrepresent* may be shown to impeach the witness either by examination of the witness *or* by *evidence otherwise adduced*." Precedent is clear on the expansiveness of this rule:

> Our courts have followed the "general rule" that "'anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony,'" so that "'on cross-examination, any fact may be elicited which tends to show interest, bias, or partiality' of the witness." *State v. Brewington*, 267 S.C. 97, 101, 226 S.E.2d 249, 250 (1976) (quoting 98 C.J.S. Witnesses §§ 460, 560a). "Rule 608(c) [of the South Carolina Rules of Evidence] 'preserves [this longstanding] South Carolina precedent.'" *State v. Sims*, 348 S.C. 16, 25, 558 S.E.2d 518, 523 (2002) (quoting *State v. Jones*, 343 S.C. 562, 570, 541 S.E.2d 813, 817 (2001) and citing *Brewington*, 267 S.C. at 101, 226 S.E.2d at 250).

Smalls v. State, 422 S.C. 174, 182–83, 810 S.E.2d 836, 840 (2018) (alterations original). It would follow then that *extrinsic evidence* of bias or a motivation to misrepresent would be admissible as well. The trial court's "decision to admit extrinsic evidence of a prior inconsistent statement will not be reversed absent a manifest abuse of discretion that prejudiced the appellant." *Carmack*, 388 S.C. at 201, 694 S.E.2d at 229 (citing *Blalock*, 357 S.C. at 78, 591 at 635). It should not be reversed on this record.

Here, Rodgers' testimony regarding Jenkins' prior statement to law enforcement would be admissible to explain Jenkins' motivation to change his story at trial—especially relevant after

the jury heard the jail call conversation between Appellant and an unknown male at issue *supra* in Argument I, that suggested intimidation and threats of violence. (*See* Tr. 368–369).

Regardless, any error in admitting Rodgers' testimony would be harmless. "Most trial errors, even those [that] violate a defendant's constitutional rights, are subject to harmless-error analysis." *State v. Rivera*, 402 S.C. 225, 246, 741 S.E.2d 694, 705 (2013). Two eyewitnesses, including the Victim who made dying declarations, identified Appellant as the perpetrator. Next, Appellant's motive was corroborated by testimony regarding Victim winning money playing dice; being susceptible because of his intoxication and youth; and Appellant's drug dealer / "hustle" lifestyle as revealed on cross-examination. Additionally, there was strong circumstantial evidence of consciousness of guilt before the jury—Appellant was found with a phone that had only been activated since October 3, the same day law enforcement made public announcements naming Appellant as a suspect; Appellant took steps to elude law enforcement and was only found five days later on October 8 in Columbia with the help of the U.S. Marshals Service; Appellant took steps to influence crucial witness testimony after the trial started, as evidenced by the recorded jail call; and Appellant concealed physical evidence tying him to the crime.

Finally, Appellant's quasi-alibi defense was thoroughly discredited on cross-examination. Appellant's only defense was that his cousin Dontae Collins picked him up from his trailer after driving back with Victim and Smith and that, another Appellant-biased witness, Donovan Riley, happened to be at the trailer that early morning after Appellant left and saw Smith and Victim get into a lethal argument. Knowing what Jenkins first said to law enforcement was not crucial to the State's case though certainly relevant. Accordingly, any error in admitting Rodgers' recall testimony was harmless. This Court should affirm.

IV. The State agrees that the trial court erred in sentencing Appellant to an additional five-year sentence under S.C. Code Ann. § 16-23-490.

Appellant argues that the trial court erred by imposing a five-year sentence under S.C. Code § 16-23-490 when Appellant was also sentenced to life imprisonment for murder. The State agrees. Under Section (A) of the statute, the "five-year sentence does not apply in cases where the death penalty or a life sentence without parole is imposed for the violent crime."

There was no objection to the sentence, and the trial court had no opportunity to consider its error. (*See* Tr. 598–599). Under standard preservations rules, this would normally bar an issue from appellate review. *See, e.g., Dunbar, supra.* However, in *State v. Plumer*, 439 S.C. 346, 351, 887 S.E.2d 134, 137 (2023), our Supreme Court considered whether an objection was required to reach such an issue and reasoned that an objection was not required to address an illegal sentence. Our Supreme Court determined that an "appellate court *may* correct that sentence on direct appeal *or remand* the issue to the trial court even if the defendant did not object to the sentence at trial[.] 439 S.C. at 351, 887 S.E.2d at 137. This is so "even if there is no real threat of incarceration beyond the limits of a legal sentence," which had been a condition precedent in prior precedent to reach an unpreserved sentencing issue. *Id.* Consequently, the manner of treatment to effect correction of the sentence is in this Court's discretion.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

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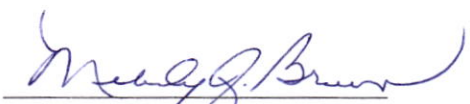
BY: 
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Columbia, South Carolina
Amended November 13, 2025

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STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Honorable Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2024-001362

THE STATE, ...RESPONDENT

v.

JAVERIS TREMANE WILLIAMS, ...APPELLANT.

CERTIFICATE OF SERVICE

The undersigned certifies that pursuant to Rule 262(c)(3), SCACR and the Supreme Court order of April 24, 2024, the Motion to Substitute and Amend Initial Brief of Respondent and the Amended Initial Brief of Respondent, along with Certificate of Service has been forwarded to Appellant's counsel, Gary H. Johnson, Esquire via email today, November 13, 2025 to gjohnson@sccid.sc.gov and his assistant at dbast@sccid.sc.gov.

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

This 13th day of November, 2025.

s/ Angela Brown

Angela Brown
Legal Assistant to Melody J. Brown
Senior Assistant Deputy Attorney General

Angela Brown

From: Angela Brown
Sent: Thursday, November 13, 2025 3:07 PM
To: gjohnson@sccid.sc.gov; dbast@sccid.sc.gov
Cc: Melody Brown; Sanders Linker
Subject: The State v. Javeris Williams (2024-001362)
Attachments: Williams.Amended IBOR.pdf; Williams.Motion to Amend.pdf

Mr. Johnson, please find attached the state's Motion to Substitute and Amend the Initial Brief of Respondent along with the Amended Initial Brief. The motion and amended brief will be electronically filed with the Court of Appeals on today's date.

Thank you,

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